147 U.S. 664

RECORD, CASE NO. 14673.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 783.

THE UNITED STATES, APPELLANT,

vs.

THOMAS FLETCHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JUNE 6, 1891.

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1 UNITED STATES CIRCUIT COURT.

Western division of eastern district of Arkansas.

Be it remembered that on the ninth day of January, 1891, came into the office of the clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, Thomas Fletcher, as marshal, by U. M. and G. B. Rose and Ratcliffe and Fletcher, esq's, his attorneys, and filed therein his complaint against the United States, which complaint is in words and figures following, to wit:

In the United States circuit court, eastern district of Arkansas.

THOMAS FLETCHER
vs. } Substituted complaint.
UNITED STATES.

Comes the said plaintiff, and for a substituted complaint herein, he says that the plaintiff was at the time of the beginning of this suit and
2 still is justly indebted unto him in the sum of five thousand eight hundred and twenty-one dollars and thirty-four cents ($5,821.34), as shown by the several items of the account hereto annexed marked Exhibit A and made a part hereof; and the said plaintiff says that said account and each and every item thereof has been submitted to the accounting officers of the United States; and that said items and each of them has been disallowed by said accounting officers.

Wherefore the plaintiff prays judgment against said defendant for said sum and for all other proper relief

RATCLIFFE & FLETCHER,
U. M. & G. B. ROSE,
For Plaintiff.

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3 *Exhibit C, to set-off.*

The United States to Thomas Fletcher, Dr.

Statement of U. S. Comptrollers; disallowances from Nov. 9, 1885 to April 2d, 1889.

Nov. 9 to Dec. 31, 1885:

Voucher No. 2.—Deputy Faulkinbury; disallowed because the expenses were incurred before Thomas Fletcher took oath of office	6.00
Vou. No. 3.—Same reason as above	4.00
" " 4.— " " " "	6.00
" " 8.—Dep'ty Faulkinbury, expense endeavoring to arrest 6 days; suspended for items and dates. "From Nov. 13th, 29th" is too indefinite; name each day in connection with that day's expenses. What is expended after the prisoner is arrested can not be included in expenses endeavoring to arrest	12.00
Vou. No. 9.—Dep'ty Faulkinbury, expenses endeavoring to arrest; suspended for items	4.00
Vou. No. 10.—Dep't Faulkinbury, expenses endeavoring to arrest; suspended for items	6.00
Vou. 12.—Dep'ty Faulkinbury, expenses endeavoring to arrest; suspended for items	4.00
Vou. 18.—Dep'ty Faulkinbury, same as above	6.00

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Nov. 9 to Dec. 31, 1885—Continued.

Vou. # 19.—Dep'ty Faulkinbury, expenses endeavoring to arrest; suspended for items		16.00
Vou. No. 21.—Dep'ty Faulkinbury, same as above		6.00
Vou. No. 24.—Deputy Faulkinbury, same as above		8.00
4 Voucher No. 28.—Dep'ty Faulkinbury, same as above		6.00
Vou. No. 1.—Thos. Fletcher, marshal, attendance at court, Nov. 15, 22, 29, and Dec. 6, 13, 20, and 27; disallowed as unauthorized, being Sundays		35.00
Vou. No. 6.—Dep'ty Comstock, mileage; disallowed on subpœna, because the same travel was charged for in serving the warrant		6.36
Vou. No. 7.—Dep'ty Faulkinbury; the charges for arresting the defendant, travel, and transporting prisoner are disallowed, as the marshal had no authority to arrest a prisoner in Mo. Committing temporarily is disallowed, as the warrant of arrest was sufficient authority for the marshal to hold the prisoner		69.61
Vou. 12.—Dep'ty Faulkinbury, mileage to serve subpœnas; disallowed, same travel being charged for in serving warrant of arrest		7.26
Vou. # 17.—Deputy Weigel, same as above		3.54
Vou. 18. Dep'ty Faulkinbury, mileage on subpœna: disallowed because charged for on warrant of arrest		8.40
Vou. 18.—Dep'ty Faulkinbury, committing temporarily: disallowed as unnecessary. The warrant of arrest was sufficient authority for the marshal to hold prisoner		.50
Vou. 20.—Dep'ty Pascoe, all fees disallowed as improperly charged. The services were performed in western district of Arkansas, and should have been performed by the marshal of that dist		94.04
Vou. No. 22.—Dep'ty Comstock, mileage on subpœna: disallowed, as the same travel was made to serve warrant		4.08
5 Vou. # 30.—Dep'ty Huffman: suspended for a full explanation as to what the court order was and by what authority the marshal charges 30c. for a *copy* and $2.00 for the service		2.30
Vou. No. 35 and 36.—Suspended for the nature of each case to be given; $2.00 each		4.00
Vou. No. 9.—Mileage on warrant disallowed, because no arrest was made		2.70
Vou. No. 9.—Mileage on subpœna disallowed		1.62
Vou. No. 32.—Outside east. dist. Ark		2.35
Vou. No. 43.—Att'd before commissioner		2.00
" " 51.—Travel on warrant of arrest		2.70
" 80.—Double mileage		7.20
" 85.—Excessive mileage		1.30
" 107.—Expense endeavoring on a subpœna		2.50
" 128.—Attendance before commissioner		6.00
Jan'y 1 to June 30, '86:		
Vou. "A."—Charge for per diems on Jan'y 3, 10, 17, 24, and 31, and Feb'y 7, 14, 21, 28, Mch. 7, 14, 21, 28, April 4, 11, 18, 25, May 2, 9, 16, 23, 30, June 6, 13, 23, 30, in all 26 days, disallowed; Sundays no court.		130.00
Vou. No. 1.—Expense endeavoring to arrest disallowed; one day		2.00
Vou. No. 1.—Mileage on subpœna disallowed: same as that made on warrant.		1.14
Vou. No. 8.—Charge for attendance before comr., $2.00, and for discharging prisoner, 50c., allowed; all other charges disallowed, the prisoner having been arrested in Missouri, which is outside of the district		127.42
Charge for attendance of deputy before comr. on Jan'y 19 suspended for evidence of its necessity, the prisoner having been committed on Jan'y 18		2.00
Charge for mileage returning for deputy, prisoner, and guards (Why 6 was not deft. taken before nearest court?), 104 miles; 14 disallowed, as excessive		4.20
Mileage on writ disallowed; acct. shows dep'ty to have been at Clinton		2.70
Expenses to arrest disallowed for same reason		4.06
Charge for mileage on sub. disallowed		1.62
Vou. 19.—Served at Nevada; suspended for information as to location of Nevada. If Nevada County, what part of Nevada County? State also when witnesses were served		2.88
Vou. 22.—Charge for mileage on writ disallowed; same travel charged in Vou. 21		3.90
Vou. 32.—Disallowed, because the endeavor was made outside of dist		2.35

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Jan'y 1 to June 30, '86—Continued.

Vou. 33.—Disallowed; outside of dist	57.33
Vou. 36.—Suspended for vouchers	2.00
Vou. 43.—2 days' attendance before comr. at Forrest City charged; att'd on Mch. 10; suspended for information as to what was done on that day	2.00
Vou. 51.—71 miles charged travel on writ; disallowed all over 26 miles, distance charged to transport	2.70
Mileage on subpœnas disallowed, as charged in service of writ	1.56
Vou. 53.—Disallowed; not served by marshal of Ark., but by marshal of the northern dist. of Texas	150.02
Vou. No. 75.—Mileage to serve subs. disallowed; same mileage charged on writ	7.86
Vou. 80.—Mileage on writ disallowed; writ not served	7.20
Vou. 85.—Suspended. When was writ served?	1.38
Vous. 94, 95, 96, & 97.—½ mileage suspended for information as to place 7 where service was had, and from where travel was actually made	17.31
Vou. 107.—Charge for expenses endeavoring to serve subpœna on Mch. 3; disallowed as unauthorized	2.50
Vou. 115.—Disallowed, as service was rendered outside of Dist	115.23
Vou. 116.—Disallowed, as service was rendered outside of Dist., and also because charged in Vou. 115	102.48
Vou. 126.—Charge for serving jury com'r; Disallowed, as not authorized	2.00
Vou. 128.—Per diems for attendance; suspended for it to be shown what was done on each day	6.00
Vou. 137.—Charge of dep'ty marshal for services taking prisoners to Detroit; disallowed, as not authorized. Only actual expenses allowed to the marshal or the person representing the marshal	10.00
Vou. 138.—Charge for mileage and serving jurors; allowed for service on 9 jurors, $3.00, and mileage suspended for it to be shown that the travel was actually and necessarily made for this purpose, and not when other process was served. (If not served while service of other process was made, why not?)	75.18
(All charges over $50.00 disallowed.)	
Like suspensions as to mileage serving subpœnas, and state in what particular location service was made	113.40
Miscellaneous expense account:	
Vou. 14.—Payment to jury com'r for one day's service, $5.00, allowed; all over disallowed, as unauthorized and excessive	10.00
8 Vou. 41.—Attendance of Bailiff Blue April 3rd; disallowed. Court not in session	2.00
Vou. 43.—Like disallowance for attendance of S. W. Tappan; Apl. 2 and 3	4.00
July 1 to Dec. 31, 1886:	
Voucher 4.—Mileage to serve subpœna at Walnut Ridge; disallowed as to 105 miles, and allowed as to 17 miles, for the reason that the same travel was made on warrant	6.30
Vou. 5.—All charges disallowed, as service was rendered outside district.	140.95
Vou. 7.—Temporary commitment	2.50
Vou. 8.—Charge for conveying deputy, guard, and prisoner from Clarendon to Little Rock, 11 miles each, 33 miles; disallowed as excessive. Why not return via Brinkley?	3.30
Mileage on subpœna in excess of five miles from Clarendon; disallowed as unauthorized	5.82
Vou. 9.—Transportation from Clarendon to Little Rock, 11 miles; disallowed as excessive	1.10
Vou. 10.—Dep'ty Hunter, charge for per diem attendance before comr., Aug. 3; disallowed. Attendance as bailiff for same day, charged and allowed	2.00
Vou. 14.—Case vs. Williams, Dep'ty Faulkinbury; all charges disallowed; service made outside district	331.00
Vou. 15.—Charge for serving and committing on temporary warrant; disallowed	2.50
Vou. 20.—Case vs. Gray, Dept. Faulkinbury; all charges disallowed because made arrest outside of district	55.41
9 Vou. 23.—Case vs. Blair, Dep'ty Pascoe charge for mileage from Batesville to near Smithville, 97 miles charged, should have been charged only from Newport where warrant was issued, 31 miles disallowed as excessive	1.86

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

July 1 to Dec. 31, 1886—Continued.

Vou. 26 (25).—Case vs. Bailey Dep'ty Cross, 159 miles, charged from Little Rock to near McNeill, 14 miles disallowed as excessive travel 84c., and transportation of 3 persons, $1.40 each 5.04

Charge for temporary warrant of commitment disallowed 2.50

Vou. 27.—Case vs. Darnell & Owens, charges for travel on warrant and subpœna and for transportation disallowed. Marshal has charge for actual expense of team going and returning 3.36

All charges for mileage for serving subpœnas disallowed, as the same were allowed for service of warrant on same day 6.72

Vou. 34.—Case vs. Jackson, Dep'ty Paschal, charge for attendance before comr. Oct. 8 & 9 disallowed, same day charged and allowed as bailiff before court 4.00

Vou. 35.—Case vs. Jackson, Dep'ty Faulkinbury; charges for mileage to Trippe, Desha Co., and vicinity in excess of 75 miles. 68 miles excessive, disallowed, travel allowed from Pine Bluff 4.08

Vou. 39.—Case vs. Roberts, Dep'ty Faulkinbury; all charges of mileage for serving subpœnas disallowed, same was allowed for service of warrant 6.78

Vou. 41.—Case vs. Roberts, Dep'ty Paschal; charge for per diem attendance before comr. Oct. 22, disallowed same day, charged for and allowed to him as bailiff 2.00

Vou. 42.—Dep'ty Faulkinbury, charge for temporary commitment disallowed ..... .50

Vou. 43.—Case vs Font, Dep'ty Tenison; charge for board and horse
10 hire for Sept. 25, 26, 27, 28, and Oct. 15, & 16, 6 days, $12.00; suspended to know route travelled and what was done each day 12.00

Same case, same deputy, charge for attendance before comr. Oct. 23, 25, & 26, suspended to know what was done each day (2 days allowed) 2.00

Same case, same deputy charged for serving temporary warrant of commitment 2.00

Vou. 52.—Dep'ty Faulkinbury, Case vs. Pratt; travel to serve subpœna at Newport, Nov. 2, disallowed same, travel made to serve warrant near Minturn in Case v. Hungerford Vou 53 ..... 5.10

Vou. 55.—Same dep'ty Case v. Roberts, 114 miles of the 118 charged going to arrest disallowed, having been same travel charged in case vs. Hungerford 6.84

Vou. 68.—Case vs. Pratt, Dep'ty Faulkinbury; travel on subpœna to Jackson Co. disallowed same charged in Vou. 72 ..... 5.10

Vou. 85.—Dep'ty Jones, mileage on subpœna disallowed, same travel charged in Voucher 84 ..... 1.98

Vou. 44.—Case vs. Pratt, Dep'ty Faulkinbury; charge for mileage for serving subpœnas in this case disallowed, as same was allowed for service of warrant on same day 5.10

Vou. 48.—Case vs. Herndon, Deputy Herkimer; charges for board and horse hire Oct. 26, 27, 28, 29, 30, and 31, suspended to know what was done on each day charged for 12.00

Vou. 60.—Case v. Livingston, Deputy Tenison, all charges for board and horse hire Oct. 31, Nov. 1, 2, 3, 4, 5, & 6, suspended to know what was actually done each day 12.00

Vou. 64.—Case vs. Holden, Dep'ty Storey; charge for mileage on sub-
11 pœna near Blue Mountain, except 8 miles disallowed, same traveled on warrant 9.72

Vou. 79.—Case vs. Rogers, Dept'y Faulkinbury, charge for temporary commitment disallowed ..... .50

Vou. 82.—Case vs. Brown, Dept'y Faulkinbury, charge for serving subpœnas near Magnolia, disallowed because same mileage was traveled on warrant 9.00

Vou. 88.—Case vs. Jones, Dep'ty Faulkinbury, charge for mileage for service of subpœnas; disallowed because some travel was made on warrant 6.54

Temporary commitment disallowed ..... .50

Vou. 90.—Case v. Cleveland, Dep'ty Faulkinbury; mileage on subpœna at Centre Point disallowed; same was charged on warrant 9.12

Vou. 91.—Case v. Moore, Dep'ty Jones; charge for attendance Dec. 3; com'r. disallowed; same day charged for attendance as bailiff before court 2.00

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

July 1 to Dec. 31, 1886—Continued.

Vou. 92.—Case vs. Cleveland, Dep'ty Jones, charge for attendance before comr., Dec. 2, disallowed; same reason as last 2.00

Vou. 94.—Case vs. Gaines, Dep'ty Johnson, mileage on subpœna disallowed; charged on warrant 1.20

Vou. 95.—Same case, Dep'ty Paschal, charge for attendance before comr. disallowed Dec. 20; charged for as bailiff 2.00

Vou. 96.—Same case, Dep'ty Blanks, like disallowance as last 2.00

Vou. 100.—Case vs. Foulk, Dep'ty Faulkinbury; all charges disallowed because out of district 79.27

All charges for per diem attendance of Marshal Fletcher on U. S. courts, from July 1 to Dec. 31, 1886, that are excepted by the amended order of court disallowed in accordance therewith 440.00

12 Vou. 103.—Transporting prisoners to S. Ills. Penitentiary; actual expense allowed.

Payment of per diem to H. N. Faulkinbury, dep'ty in charge; disallowed as unauthorized 6.00

Vou. 104.—Suspended for explanation; on examination, it appears that some of the writs, at any rate, were served when the deputies were out serving other process, for which the mileage has been charged and allowed, and as the time intervening between the issuance of the writs and their service was a general rule considerable, it is evident that the writs were held till a convenient time to make the travel. Explanation is required showing what travel was made when there was no travel on other writs, and for the necessity to make a separate travel in those cases in which such travel was made; state full particulars 207.37

Vou. 1.—Summoning jurors suspended, for it to be shown how many were served; how much travel was necessarily made to perform the service. Was not the travel made when travelling to serve other process; and if not, why not? State full particulars ($26.66 allowed) 23.34

Charge for attendance, July 5th, suspended. All over the country this day was celebrated as "Independence Day," the 4th occurring on Sunday, and it would seem that court might have adjourned over that day 5.00

13 Jan'y 1 to June 30, 1887:

Vou. 3.—Dep'ty Faulkinbury case vs. J. A. Herndon. Expense endeavoring to arrest disallowed; out of marshal's district 17.75

Vou. 16.—Charge for serving order on jury. Com'r disallowed as unnecessary 2.00

Vou. 6.—Dep'ty Faulkinbury mileage on subpœna disallowed; same travel made on warrant 3.90

Vou. 7.—Case vs. Dukes. All charges except attendance before com'r and for service of subpœna disallowed, as marshal is not authorized to serve outside of district, and for the reason that the prisoner was already under arrest and in charge of the marshal of the western district of Missouri and the service was unnecessary ... 28.27

Vou. 8.—Case vs. Dukes. The entire voucher disallowed as not belonging to the duties of the Ark. marshal (support of prisoner twice charged) 74.90

Vou. 12.—Case vs. Amos Mattox. All charges disallowed; served outside of district. Also for the reason that the prisoner was already in charge of the marshal of the district of Indiana 42.30

Vou. 13.—Case vs. Dan'l Clemmons. Disallowed same as vou. 7; 100 miles charged in excess 27.58

Vou. 14.—Like disallowance 129.40

Vou. 15.—Like disallowance case v. Amos Mattox 187.00

Vou. 23.—Case vs. Cox et al. Mileage to Conway disallowed; same travel charged in case vs. Barnard, vou. 17 ..... 1.80

Vou. 26.—Dep'ty White case vs. L. E. Cook. Charge for mileage to serve subpœnas from Little Rock to Russellville disallowed. Deputy was at Dover and traveled but 10 miles to reach Russellville, and is allowed mileage for that in addition to hack hire 4.68

Vou. 36.—Case vs. Chandler. Mileage to Bassville allowed 32 miles;
14 all over this disallowed, as 28 miles, 6c., $1.68; returning 3-28 m. 84, 10c., $8.40 ..... 10.08

Expenses to arrest March 29 & 30 disallowed. Warrant served on 28th 4.00

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Jan'y 1 to June 30, 1887—Continued.

Vou. 37.—Case vs. Jno. McKinney. Mileage to serve disallowed; same as was charged in voucher 36 ..... 3.60
Mileage for prisoner all'd & disallowed same as in voucher 36. .... 2.80
Vou. 38.—Case vs Richard McKenney. Mileage for prisoner & guard—same. 5.60
Vou. 40.—Case vs. Thomas. Same mileage allowed as voucher 36 ..... 10.08
Vou. 28.—Dept. Faulkinbury case vs. J. E. Quinn. Charge is for $8.50 endeavoring to arrest going to Moark. Allow 2.00 for one day and disallow 6.50 as excessive. It was not necessary to go to (via) St. Louis 6.50
Vou. 30.—Dep'ty Blanks case vs. L. E. Cook. Charge for attendance M'ch 2 suspended for necessity of same. Dep'ty White was also in attendance 2.00
Vou. 32.—Dep'ty Dickinson. Charge is made of $27 expenses serving subpœnas in case vs. Robinson; $10.00 is suspended for further explanation. It appears from the letter accompanying the bill that the conveyance employed was used to transport witnesses. Could not the trip have been made cheaper if the deputy had gone with a single horse, for instance, horseback? Transportation of witnesses is something the witnesses should provide for themselves for which they are allowed mileage 10.00
Vou. 33.—Dep'ty Faulkinbury case vs. Gladden. Allow expenses endeavoring to arrest M'ch 16 & 17 going to Magnolia, and disallow expenses after arriving at Magnolia on the 18th. Unnecessary
15 for more than two days all the way by rail, 150 miles. .... .50
Vou. 41.—Fees charged on execution case vs. J. W. Dunley et al. suspended for explanation. What was done with the $100.00 collected? Furnish vouchers for advertisement in Weekly Democrat. Charge is made for posters 2.00, posting 2.50, and for copy for posters and paper. Should not the charge for copy be included in the other two items? 14.75
Vou. 49.—Dep'ty Storey case vs. Smart. Transportation for guard suspended. Why could not the deputy unaided transport one man from Batesville to Little Rock? 11.30
Vou. 58.—Dep'ty Ferguson, like suspension 9.70
" 65.— " Faulkinbury " " 4.80
" 68.— " " " " 4.20
" 70.— " " " " 4.00
" 71.— " " " " 8.50
" 72.— " " " " 7.10
" 75.— " " " " 11.20
" 77.— " Lorwell " " 23.10
" 53.—Case vs. Bell, charge of expenses endeavoring to arrest on April 25th disallowed; $2.00 charged for same day in voucher 55.... .50
Vou. 79.—Case vs. Stewart, attachment for a witness; guard disallowed as not necessary 26.80
Expenses to arrest June 1 & 2 suspended for explanation. Where was endeavor made? Arrest made on the 11th 4.00
Vou. 80.—Same case, guard disallowed; same charge for travel from Little Rock to Oxford, Miss 13.50
Allowed Little Rock to Memphis ..... 135 m.
Memphis to Holly Springs 45
Holly Springs to Oxford 29
209
16 Allow this; disallowed as excessive 44 miles for 2=83 miles 8.80
Vou. 82.—Per diem of deputy disallowed as not expenses lent a fee, for the deputy represents the marshal and only expenses are allowed 6.00
Vou. 84.—The marshal charges for attendance before comm'r on Jan'y 7, 28; Feb'y 17, 19, 21; March 2, 19, 31; Apr'l 4, 14, 20, 22; May 7, 18, 28; June 6, 8 disallowed; same days charged in attendance on court 34.00
Vou. 62.—Dep'ty Currie, expenses endeavoring to arrest charged two days; allow $1.50 and disallow for one day $1.00; only 16 miles travel. 1.00
Vou. 76.—Dep'ty Lacewell case vs. J. Dison, travel to serve suspended for it to be stated where deputy was when he received the warrant... 13.86

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Jan'y 1 to June 30, 1887—Continued.

Wit. fees, 1887.

Payment by Geo. F. Stone to Porter disallowed; not necessary expense, but a gratuity 1.50

Charge of John M. Dean for mileage between El Passo and Little Rock, 2,504 miles, both ways, disallowed as excessive 100 miles 24.50

17 July 1, to Dec. 31, 1887:

The marshal charges for attendance on com'rs court on July 2 & 9, Sept. 7, Oct. 29, Nov. 19 & 29, Dec. 20 & 24; disallowed; same days charged as in attendance on court 16.00

Voucher 53.—Dep't'y Faulkinbury charge for serving 3 warrants of commitment; 2 disallowed as not necessary 4.00

Voucher 61.—Charge for serving 4 warrants of commitment; 3 disallowed as excessive and not necessary 6.00

Charge for 4 commitments; 3 disallowed 1.50

Voucher 65.—Dep'ty Mackey, charge for attendance on Sept. 30, Oct. 1, 4, 6, 3 days suspended. What was done on each day 6.00

Vou. 66.—Dep'ty Faulkinbury, charge for serving 3 warrants of commitment and committing prisoners; 2 disallowed 5.00

Mileage of guard suspended for certificate 9.20

Vou. 68.—Charges for expenses endeavoring to arrest disallowed. Prisoner already arrested 4.00

Vou. 70.—Dep'ty Currie, U. S. ex rel, C. R. Breckenridge et al vs. F. J. Wise, com'r; fee suspended to show how U. S. is habe lfor these fees 12.02

Vou. 91.—Dep'ty Livingston, case 2, Meredith Charles, fees on execution; disallowed; nothing made on execution 1.48

Vou. 93.—Marshal Fletcher, mileage on subpœnas suspended for it to be shown that the travel was not made when serving other process. 147.66

18 Miscellaneous expenses, July 1, '87, to June 30, '88:

Payment of Jno. Barron, notary public, for taking acknowledgment of lease ..... .75

Payment to W. R. Kelly, rent; disallowed by Attorney-General 1.00

Charges for payment to J. S. Grummett and others, "*posse comitatus*" suspended, the vouchers 22 to 33 not appearing in the account 72.00

Jan'y 1 to June 30, 1888:

Vou. 1.—Attendance before the commissioner on the following dates disallowed, same days charged and allowed for attendance on court Jan'y 17, March 23, Apl. 6, 7, 9, 13, 14, & 25, May 1, 2, & 16, and June 29 ..... 24.00

Vou. 4.—Dept. Faulkinbury, charge for expense endeavoring to arrest disallowed on Jan'y 8 & 9, as on these dates deputy was conveying a prisoner from Little Rock to Texarkana. (See No. 5) 2.50

Vou. 9.—Dep'ty Faulkinbury, mileage to serve subpœna on Jan. 30 at Kedron; disallowed as this travel seems to have been charged in mileage to serve warrant 3.48

Vou. 10.—Dep'ty A. J. Hunter, charge for service of order on jury comr.; disallowed as unnecessary and not chargeable to U. S 2.00

Vau. 11.—Deputy Faulkinbury, charge for mileage to serve subpœna, from Little Rock to near Dee, disallowed; charged for in warrant 9.18

Vou. 12.—Mileage to Pecan Point disallowed for same reason 11.10

Vou. 14.—Disallowed for same reason 11.10

" 17.— " " " " 8.10

19 Vou. 19.—Disallowed for the reason that the service was performed outside of the district 126.36

Vou. 23.—One warrant of commitment disallowed as excessive; the names of both prisoners should be included in one warrant 2.00

Vou. 25.—Same reason as last 2.00

Vou. 26.—Mileage to serve subpœna disallowed; mileage charged on writ .. 8.28

Vou. 27.—Same reason as last 11.70

Vou. 28.— " " " " ..... .24

Vou. 46.—Dep'ty Faulkinbury, 143 miles to serve subpœnas; suspended to know if this travel was not charged on warrant 8.58

Vou. 48.—Same as last 2.58

Vou. 54.—Of the mileage to serve sub. charged, 170 miles suspended; was this not charged for on warrant 10.20

Vou. 56.—Mileage on subpœna disallowed; seems to have been charged on warrant 12.00

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Jan'y 1 to June 30, 1888—Continued.

Vou. 64.—Mileage on subpœnas charged suspended for information as to whether the travel was not made while serving other process, and if not why not 75.90

July to December 3, 1888:

Voucher 1.—The marshal's charge for 109 per diems disallowed as not approved by court 545.00

Vou. 3.—Dept. Faulkinbury, case vs. J. M. Simmons; one of the two per diems charged in this voucher suspended to know what was done on each day to constitute a hearing 2.00

Vou. 4.—Mileage to serve disallowed, as this is shown to have been made in Vou. 3 ..... 4.86

20 Vou. 6.—Dep'ty Faulkinbury, case vs. Mellinger, nine miles of travel going to serve from Little Rock to Peru, and seven miles of transportation from Peru to Newport for dep'ty, prisoner, and guard on return, disallowed as excessive, 54c. & 2.10 ..... 2.64

Travel on subpœna disallowed; same as to that to serve warrant 11.10

Vou. 9.—120 miles of the travel to serve subpœna at Black Rock in case vs. Mellinger, July 13 & 14, disallowed as having been charged in case vs. Cal. Beckham, voucher 10, to serve warrant near Peru on July 13 ..... 7.20

Vou. 13.—Case vs. Clabe Glascoe, mileage on warrant to near Peru disallowed; charged and allowed in case vs. Cal. Beckham 9.90

Vou. 19.—Case vs. Jake Jones, 116 miles of the 122 miles charged on 8 subpœnas to 7 miles n. e. of Batesville disallowed; same travel as that to serve warrant in same case 6.96

Vou. 21.—Case vs. W. M. Rich, travel to serve subpœna at St. Francis disallowed; same as that made on warrant 12.00

Vou. 22.—Case vs. S. P. Lees, like disallowance 8.58

Vou. 23.—Dep'ty Faulkinbury, transportation from Pine Bluff to Little Rock suspended for information as to why it was necessary to convey prisoner via Pine Bluff from Jonesboro, which appears to be the longest and least practicable route 12.60

Vou. 28.—Travel on subpœna, case vs. Thos. Nunnelly, to near Batesville, 115 miles, disallowed, having been charged on warrant 6.90

Vou. 34.—Case vs. Thomas Sullivan, one per diem attendance suspended to know what was done on each day to constitute a hearing 2.00

21 Travel in subpœna disallowed; same as that on warrant 9.72

Vou. 38.—Mileage to Oil Trough in this voucher is disallowed, as same is shown to have been made in vou. 36 ..... 6.36

Vou. 42.—Charge for mileage to serve subpœna disallowed, as having been charged in mileage to serve warrant 6.90

Vou. 54.—Case vs. Peoples, charge for mileage disallowed, as the warrant does not appear to have been served 21.12

Vou. 64.—Of the travel to serve warrant there is disallowed 110 miles; as above; same as on warrant 6.60

Vou. 68.—Mileage to serve subpœna disallowed; charged on warrant 4.32

Vou. 73.—Mileage on subpœna disallowed; charged on warrant 1.38

Vou. 77.—Like disallowance 3.00

Vou. 78.—More than 100 miles from Little Rock to 2 miles N. of Warren disallowed as excessive 26.28

Travel to serve subpœna at Kingsland disallowed, as having been made while deputy was serving warrant of arrest 4.56

Vou. 83.—More than 80 miles to Snapp disallowed as excessive; 45 miles disallowed and transportation of 3 persons 16.20

Vou. 84.—Transportation of one person disallowed 45 miles 4.50

Travel to serve disallowed, as having been allowed in case vs. Robt. Anthony, vou. 83 ..... 7.50

Vou. 88.—Service of order on jury comr. disallowed as unauthorized by law and unnecessary; the jury comr. is an officer of the court 2.00

22 Vou. 93.—Mileage on subpœna disallowed; same travel on warrant.. 4.44

Vou. 102.—Of the milage to serve subpœna 82 miles disallowed as having been the same travel as that made on warrant 4.92

Vou. 103.—Marshal Fletcher, mileage charged to serve U. S. witnesses suspended to have it shown that the travel was in each instance made necessarily for this service, and not while engaged on other process; but one mileage is properly chargeable for one actual travel. 133.80

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

January 1 to April 2, 1889:

Vou. 1.	—Fourteen per diems disallowed, as not approved by court	70.00
Vou. 4.	—Mileage to serve subpœna disallowed as above; same travel as on warrant	9.00
Vou. 8.	—Eighteen miles of distance to Clarendon disallowed as excessive	1.08
	Travel on subpœna disallowed; charged on warrant	5.88
Vou. 9.	—Like disallowance as last	10.38
Vou. 11.	—81 miles charged on subpœnas disaliowed, as having been traveled on warrant	4.86
Vou. 13.	—Mileage to serve subpœna disallowed; travel same as that charged in vou. 12	3.00
Vou. 20.	—89.24 of the milage charged on subpœna disallowed, as being the same travel as that charged on warrant	9.24
Vou. 22.	—Mileage on subpœna disallowed; charged on warrant	1.44
	Expenses endeavoring on July 21; same charged in vou. 14	2.00
23 Vou. 23.	—Milage on subpœna for 22 miles disallowed; charged for on warrant	1.32
Vou. 26.	—13 miles on subpœna disallowed; charged on warrant	.78
Vou. 38.	—Attendance two days suspended to know what was done on each of the three days charged to constitute a hearing	4.00
Vou. 39.	—Mileage of guards suspended for vouchers	9.00
Vou. 42.	—Marshal Fletcher, mileage on subpœnas suspended to have it shown that the travel was in each instance made necessary for this service and not while serving other process	54.78
Vou. 43, 44, 45, and 46,	in which charges are made by clerk for filing accounts, etc., disallowed as not chargeable to the U. S	25.60
Vou. 47.	—Marshal Fletcher, charge for attendance before U. S. com'r at Little Rock, disallowed. Same days charged for attendance before U. S. court	28.00
Pay of bailiffs disallowed:		
Sunday at Texarkana, Wesley Tilley		2.00
Vou. 28.	—Meals for guard, J. W. Knott	5.50
Vou. 33.	—Milage paid jury com'r	2.70
24 Supplemental account:		
Vou. 1.	—Sunday per diems and days on which no court was held	180.00
Vou. 2.	—Paid clerk for filing accounts	4.05
" 3.	— " " " " "	5.30
" 4.	— " " " " "	2.60
" 5.	— " " " " "	6.55
" 6.	—For 2 mileages	20.10
" 7.	—	7.56
" 8.	—	1.80
" 9.	—	6.78
" 10.	—	9.00
" 11.	—	3.60
" 12.	—	3.60
" 13.	—	3.60
" 14.	—	8.58
" 15.	—	8.58
" 16.	—	3.90
" 17.	—	11.40
" 18.	—	9.72
" 19.	—	7.98
" 20.	—	4.26
" 21.	—	8.88
Supplemental account, Oct. term, 1887.—Abstract No. 4:		
Voucher 8.	—U. S. v. John M. Cobb, mileage sub	10.88
" 9.	— " v. Greer, mileage sub	9.36
" 10.	— " v. James Scott, " "	7.02
" 11.	— " Hamilton Scott, " "	7.02
" 12.	— " vs. Winfield Scott, " "	7.02
" 14.	— " " B. C. Shirey, " "	10.68
" 15.	— " " J. L. Hall, " "	19.20
" 16.	— " " H. Cope, " "	9.60
" 17.	— " " Dalgam, " "	9.60
" 18.	— " " Recher, " "	10.62
" 19.	— " " Dallahar, " "	10.62
" 20.	— " v. Shirey " "	8.40
" 21.	— " v. Faulk, " "	9.00

EXHIBIT C.—*Statement of U. S. Comptrollers, etc.*—Continued.

Supplemental account, Oct. term, 1887.—Abstract No. 4—Continued.

25	Voucher 22.—U. S.	v. Stansel,	mileage	sub	1.38
	" 23.— "	v. Josey,	"	"	6.48
	" 24.— "	v. Gellespie,	"	"	9.00
	" 25.— "	v. Ragland,	"	"	5.04

Endorsed:
Filed January 9th, 1891.

By RALPH L. GOODRICH, *Clerk.*
W. P. FEILD, *D. C.*

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26 United States of America, western division of the eastern district of Arkansas.

Be it remembered that, at a circuit court of the United States of America in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and ninety, at the United States court room in the city of Little Rock, Arkansas, the honorable John A. Williams, district judge, presiding and holding said court, the following proceedings were had, to wit:

On January 10, 1891.

THOS. FLETCHER, AS MARSHAL,
v.
THE UNITED STATES.

Comes the United States by S. R. Allen, esq., assistant district attorney, and files herein its answer, plea of set-off, and counterclaim. Which answer, &c., are in the words and figures following, to wit:

27 *Answer and set-off.*

In the circuit court of the United States for the eastern district of Arkansas.

THOMAS FLETCHER
v.
THE UNITED STATES.

Comes the United States and answering the complaint of the plaintiff herein exhibited against her says that as to the said sum sued for and the several items and each and every thereof set out in the said account and bill of particulars filed with the said complaint and marked Exhibit "A," that the same, nor any item thereof, has ever been presented to the accounting officer of the United States and disallowed and rejected and payment thereof denied; and the defendant further says that it is not indebted to the plaintiff in the sum or sums in said complaint and account mentioned, nor for any of them, nor for or on account of any other sum
28 whatever. Wherefore the defendant prays that the said complaint may be dismissed.

2d. And the said defendant further says that the said plaintiff is indebted to her in the sum of one thousand and seventy-two dollars and fifty-eight cents (1,072.58), for money which the plaintiff had and received of the defendant and which was paid into his hands as U. S. marshal of the eastern district of Arkansas, by the plaintiff and which money still is now in his hands unexpended, and which he now owes to the United States as per account filed herewith, Exhibits A B C.

Wherefore the defendant asks that the same may be taken as a set-off and counterclaim of the defendant against the plaintiff and that the defendant recover the same against the plaintiff and have judgment over against the plaintiff for the said sum of one thousand and seventy-two dollars and fifty-eight cents (1,072.58.)

29 And for all other proper relief.

By CHAS. C. WATERS,
U. S. Atty.
SAMUEL R. ALLEN,
Asst. U. S. Atty.

Which Exhibit A is as follows:

Exhibit A to answer.

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., Dec. 4, 1889.

THOMAS FLETCHER, Esq.,
Late U. S. Marshal, Little Rock, Arkansas:

SIR: The balance of $150 found due to you per Rept. 116671, of which you were advised by letter from this office of date the 28th September last, will now be disposed of by transferring the same to your credit on account of a balance due from you for fees of witnesses, 1889.

Very respectfully,

A. C. MATTHEWS,
Comptroller.
By J. R. GARRISON,
Deputy Comptroller.

E. G. H.

30 Which Exhibit B is as follows:

Exhibit B to answer.

[Division of judicial accounts. Form 78.]

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., Dec. 4, 1889.

THOS. FLETCHER, Esq.,
Late U. S. Marshal, Little Rock, Arkansas:

SIR: Accounts between you and the United States under appropriations for the fiscal year ending June 30, 1889, have been examined in this office

per the reports of the First Auditor enumerated below, and balances therein certified as follows, viz:

No. 117888.	Fees & expenses of marshal U. S. courts, bal. due you	$5.00
No.	Fees of witnesses U. S. courts, bal. due	
No.	Support of prisoners "	
No.	Pay bailiff, &c.' "	
No.	Misc. expenses	
No.	Fees & expenses of marshal	

Copies of the Treasury statements of said accounts are herewith enclosed.

Very respectfully,

A. C. MATTHEWS,
Comptroller.

31 By J. R. GARRISON,
Deputy Comptroller.

The above balance will be carried to your credit on account of fees of witnesses, 1889.

E. G. H.

Which Exhibit C is as follows:

[Office of the Register of the Treasury. Form 1a. Transcript certificate.]

TREASURY DEPARTMENT,
REGISTER'S OFFICE,
Washington, D. C., Aug. 19, 1889.

Pursuant to section 886 of the Revised Statutes of the United States, I, W. S. Rosecrans, Register of the Treasury Department, do hereby certify that the annexed is a transcript from the books and proceedings of the Treasury Department, and true copies of the originals on file in the case of Thomas Fletcher, late U. S. marshal for the eastern district of
32 Arkansas, on account of fees of witnesses for fiscal year ending June 30, 1889.

W. S. ROSECRANS,
Register.
A. H.

J. N.

Be it remembered, that W. S. Rosecrans, esq., who certified the annexed transcript, is now and was at the time of doing so Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Geo. S. Batcheller, Acting Secretary of the Treasury of the United States, have herewith subscribed my name and caused to be affixed the seal of this Department, at the city of Washington, this 19th day of August, in the year of our Lord 1889.

[L. S.] GEO. S. BATCHELLER,
Acting Secretary of the Treasury.

33 [No. 113597. Form 84.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
March 26, 1889.

I hereby certify that I have examined and adjusted an account between the United States and Thos. Fletcher, U. S. marshal for the eastern district of Arkansas on account of appropriation for fees of witnesses U. S. courts, for fiscal year 1889, under bond dated Aug. 16, 1886, and find that he is chargeable, viz:

To balance of his account per Report No. .					
To warrants on the Treasury, viz:					
No. 104,	dated	July 16,	1888	.....	500.00
" 265,	"	Aug. 7	"	.....	1,000.00
" 368,	"	Oct. 11	"	.....	1,000.00
" 410,	"	Nov. 1	"	.....	1,750.00
" 524,	"	Dec. 24	"	.....	2,000.00
" 608,	"	Feby. 1,	1889	.....	3,750.00
" 675,	"	Mar. 9	"	.....	2,500.00
				Dollars..	12,500.00

I also find that he is entitled to credit—

By balance of his account per Report No. .					
By amount of his disbursements—					
Oct. term & from July 1 to Dec. 31, 1888				.....	2,884.20
34 Warrants in favor of treasurer, No.		, dated	188	.....	.....
Commission on disbursments §		, at 2 per cent.		.....	.....
Suspensions per Rept. No.		, now allowed		.....	.....
Bal: due the U. S				.....	9,615.80
				Dollars..	12,500.00

A. L. C.

As appears from the statement and vouchers herewith transmitted for the decision of the First Comptroller of the Treasury therein

JAS. Q. CHENOWITH,
First Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

J. A. J.

FIRST COMPTROLLER'S OFFICE.

I admit and certify the above balance of nine thousand six hundred fifteen and $\frac{80}{100}$ dollars, this fourth day of April, 1889.

M. J. DURHAM,
Comptroller.

By J. R. GARRISON,
Deputy Comptroller.

To the REGISTER OF THE TREASURY.

35 [113597. First Auditor's Office. Form 86.]

Thos. Fletcher, U. S. marshal for the east. dist. Ark's, in account with the U. S. Fees of witnesses, fiscal year ending June 30, 1889. Bond dated Aug. 16, 1886.

Dr.		Cr.	
To balance due U. S. per report No.		By balance due marshal per report No.	
To warrant on the Treasurer—		By disbursements for fees of witnesses, Oct. term, & from July 1 to Dec. 31, '88	2, 884. 20
No. 104, dated July 16, 1888	500. 00	" warrants in favor of the Treasurer, No , dated , 18	
No. 265, " Aug. 7, "	1, 000. 00	Balance due U. S	9, 615. 80
No. 368, " Oct. 11, "	1, 000. 00		
No. 410, " Nov. 1, "	1, 750. 00		
No. 524, " Dec. 24, "	2, 000. 00		
" 608, " Feb'y 1, 1889	3, 700. 00		
" 675, " M'ch 9, "	2, 500. 00		
Dollars	12, 500. 00	Dollars	12, 500. 00
Statement of differences—			
Balance due U. S. per this statement	9, 615. 80		
" " " marshal's &c	3, 365. 80		
	6, 250. 00		
Arising as follows—			
Warrants No. 608 & 675 herein ch'g'd, not credited by marshal in his account	6, 250. 00		

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
Mar. 26, 1889.

Examined and stated by—

A. L. CARROLL.

FIRST COMPTROLLER'S OFFICE,
Apr. 4, 1889.

Examined by—

SARGEANT.

36 [113597.]

The United States in account current with Thomas Fletcher, United States marshal for the eastern district of Arkansas, for fees of witnesses at and previous to the October term, 1888, of the United States cir. & dist. court, held at Little Rock.

Dr.						Cr.	
		Abstract.	Dollars.	Cts		Dolls.	Cts
	To disbursements: Paid witnesses before cir. and dist. court	1	1 285	35	By bal. due the United States per last account for fees of witnesses		
		2			By draft of the United States treasurer, dated—		
		3			July 18, 1888	500	00
		4			Aug. 11, "	1, 000	00
		5			Oct. 12, "	1, 000	00
		6			Nov. 5, "	1, 750	00
		7					
		8					
		9					
		10					
		11					
		12					
		13					
		14					
		15					
		16					
			1, 285	35			
	To balance due the United States		2, 964	65			
			$4, 250	00		$4, 250	00

Account filed, approved, and forwarded to Hon. First Auditor Dec. 8, 1888.

EAST. DISTRICT OF ARKS., *ss:*

Thos. Fletcher, marshal of the United States for said district, being duly sworn, deposes and says that it appears from the orders delivered to him that the persons named in the abstracts referred to in the above account severally attended as witnesses as stated in the abstracts, and that they were entitled to the sums opposite their respective names in the abstracts, for attendance and travel; and he further says that said sums have been paid to them, respectively, in lawful money.

THOMAS FLETCHER,
Marshal.

Sworn and subscribed to this 19 day of Dec., 1888, before me.

RALPH L. GOODRICH,
U. S. Com'r.

37 [113597.]

The United States in account current with Thomas Fletcher, United States marshal for the eastern district of Arks., for fees of witnesses during six months ending Dec. 31, 1888, of the United States cir. & dist. court, held at Texarkana, Helena, & Little Rock.

DR.	Abstract.	Dolls.	Cts.	CR.	Dolls.	Cts
To disbursements:				By bal. due the United States per last account for fees of witnesses	2,964	65
Paid witnesses before cir. & dist. courts	3	848	40	By draft 14306 of the United States Treasurer, dated Dec. 27, 1888	2,000	00
Paid witnesses before commissioner	3a	750	45			
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
	14					
	15					
	16					
		1,598	85			
To balance due the United States		3,365	80			
		$4,964	65		$4,964	65

EAST. DISTRICT OF ARKANSAS, *ss:*

Thos. Fletcher, marshal of the United States for said district, being duly sworn, deposes and says that it appears from the orders delivered to him that the persons named in the abstracts referred to in the above account severally attended as witnesses as stated in the abstracts, and that they were entitled to the sums opposite their respective names in the abstracts, for attendance and travel, and he further says that said sums have been paid to them, respectively, in lawful money.

THOMAS FLETCHER,
Marshal.

Sworn and subscribed to this 16 day of Feb'y, 1889, before me.

RALPH L. GOODRICH,
U. S. Com.

38 [No. 114920. Form 84.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
June 6, 1889.

I hereby certify that I have examined and adjusted an account between the United States and Thos. Fletcher, U. S. marshal for the eastern district of Arkansas, on account of appropriation for fees of witnesses U. S. courts, for fiscal year 188 , under bond dated Aug. 16, 1886, & find that he is chargeable, viz:

To bal. of his a/c per report No. 113597	9,615.80
Dollars—	9,615.80

I also find that he is entitled to credit:

By amount of his disbursements, fees of witnesses, Oct. '88, & Ap. '89 term..	897.75
Warrant in favor of Treasurer, No. 394, dated May 21, 1889	4,968.05
Bal. due U. S	3,750.00
Dollars—	9,615.80

A. L. C.

39 as appears from the statement and vouchers herewith transmitted for the decision of the First Comptroller of the Treasury thereon.

O. B. HALLAM,
Act'g 1st Auditor, &c.

To the 1ST COMPTROLLER OF THE TREASURY.

J. A. G.

FIRST COMPTROLLER'S OFFICE.

I admit and certify the above balance of three thousand seven hundred and fifty dollars, this 14th day of June, 1889.

A. C. MATTHEWS,
Comptroller.
By J. R. GARRISON,
Deputy Comptroller.

To the REGISTER OF THE TREASURY.

40 [First Auditor's Office, Form 86.]

Thos. Fletcher, U. S. marshal for the east. dist. of Arks., in account with the U. S—Fees of witnesses, fiscal year ending June 30, 1889. *Bond dated Aug.* 16, 1886.

DR.			CR
To balance due U. S. per report No. 113597	9,615.80	By bal. due marshal, per Rept. No. 113597 : Disbursement for fees of witnesses, Oct., '88, & Apr., '89, terms	897.75
		Warrant in favor of the Treasurer, No. 394, dated May 21, 189	4,868.05
		Bal. due U. S	3,750.00
Dollars..	9,615.80	Dollars..	9,615.80
Statement of differences :			
Bal. due U. S., per marshal's a/c	4,968.05		
" " " " this statement	3,750.00		
Cr. difference	1,218.05		
Arising as follows :			
1 warrant, No. 394, credited herein not charged by marshal in a/c	4,968.05		
2 outstanding, per Rept. 113597	3,750.00		
	1,218.05		

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
June 7, 1889.

Examined and stated by—

A. Q. CARROLL.

FIRST COMPTROLLER'S OFFICE,
June 11, 1889.

Examined by—

SARGEANT.

41 [114920. Original.]

The United States in account-current with Thos. Fletcher, United States marshal for the east. district of Arks., for fees of witnesses at and previous to the Oct. & Ap. terms of the United States cir. and dist. court held at Little Rock, Texarkana, & Helena.

CR.				DR.		
	Abstract.	Dolls.	Cts.		Dolls.	Cts.
To disbursements: Paid witnesses before cir. and dist. courts.....	3	409	40	By bal. due the United States, per last account for fees of witness ..	3,365	80
	3*a*	488	53	By draft of the United States Treasurer, dated Mch. 2, 1889.....	2,500	00
	3					
	4					
	5					
	6					
	7					
	8					
	9					
	10					
	11					
	12					
	13					
	14					
	15					
	16					
To balance due the United States.....		4,962	05			
		5,865	80		5,865	80

E. DISTRICT OF ARKS., *ss.:*

Thos. Fletcher, marshal of the United States for said district, being duly sworn, deposes and says that it appears from the orders delivered to him that the persons named in the abstracts referred to in the above account severally attended as witnesses as stated in the abstracts, and that they were entitled to the sums opposite their respective names in the abstracts, for attendance and travel; and he further says that said sums have been paid to them, respectively, in lawful money.

THOS. FLETCHER,
Marshal.

Sworn and subscribed to this 26 day of Apr., 1889, before me.

RALPH L. GOODRICH,
U. S Com.

42 [No. 116017. Form 84.]

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
Aug. 9, 1889.

I hereby certify that I have examined and adjusted an account between the United States and Thos. Fletcher, U. S. marshal for the east. dist. of Arkansas, on account of appropriation for fees of witnesses, U. S. courts, for fiscal year 1889, and find that he is chargeable, viz:

To balance of his a/c per rept. No. 114920	3,750.00
Dollars.	3,750.00

I also find that he is entitled to credit:

Warrant in favor of Treasurer:	
No. 608, dated June 29, 1889	1,345.84
" 621 " " "	1,176.58
Bal. due U. S	1,227.58
Dollars.	3,750.00

A. L. C.

as appears from the statement and vouchers herewith transmitted for the decision of the First Comptroller of the Treasury thereon.

GEO. P. FISHER,
H. *First Auditor.*

To the FIRST COMPTROLLER OF THE TREASURY.

43 A. J.

FIRST COMPTROLLER'S OFFICE.

I admit and certify the above balance of one thousand two hundred twenty-seven & $\frac{58}{100}$ dollars this 14 day of August, 1889.

A. C. MATTHEWS,
Comptroller.
By J. R. GARRISON,
Deputy Comptroller.

To the REGISTER OF THE TREASURY.

44 [First Comptroller's Office. Form 68.]

Thos. Fletcher, U. S. marshal for the eastern district of Arks., in account with the U. S.—fees of witnesses, fiscal ending June 30, 1889. *Bond dated Aug.* 16, 1886.

DR.		CR.	
To bal due from him, per Report No. 114920	3,750.00	Warrants in favor of the Treasurer:	
		No. 608, dated June 29, 1889	1,345.84
		" 621, " "	1,176.58
		Bal. due U. S	1,227.58
Dollars..	3,750.06	Dollars..	3,750.00

TREASURY DEPARTMENT,
FIRST AUDITOR'S OFFICE,
Aug. 9, 1889.

Examined and stated by—

A. S. CARROLL.

FIRST COMPTROLLER'S OFFICE,
Aug. 14, 1889.

Examined by—

L. SARGEANT.

45 And on February 24, 1891, as follows:

THOMAS FLETCHER, LATE U. S. MARSHAL,
v.
THE UNITED STATES.

Comes the plaintiff, by Ratcliffe and Fletcher, esqrs., his attorneys, and comes the United States, by Charles C. Waters, esq., district attorney, and S. R. Allen, assistant to district attorney, and, on motion of plaintiff, leave is granted him to dismiss this action as to the claim of two hundred and eighty per diems on the Lord's day, amounting to the sum of fourteen hundred dollars, which leave is granted, and this action as to that claim is dismissed without prejudice to the right of the plaintiff to bring another suit therefor.

And this cause having been at a previous day of this term submitted to the court upon the evidence and argument of counsel, & the
46 court having now fully considered the same and being sufficiently advised in the premises, finds the issues for the plaintiff and assesses his damages at the sum of three thousand and sixty-nine dollars and sixteen cents.

It is therefore considered ordered and adjudged that said plaintiff, Thomas Fletcher, late marshal, do have and recover of and from the United States the said sum of three thousand and sixty-nine dollars and sixteen cents ($3,069.16) for his damages so assessed as aforesaid, & that each party pay one-half of the costs incurred herein.

Which application to withdraw a part of the account is as follows:

Per diems of marshal disallowed for Sundays and days on which no court was held:

Vou. 1.—Oct. term, 1885	35.00
" A.—Ap. " 1886	130.00
" 1.—Oct. " "	440.00
" 1.— " " 1888	545.00
" 1.—Ap. " 1889	70.00
" 1.—Supplemental	180.00
	1,400.00

47 THOS. FLETCHER
v.
UNITED STATES.

Comes Thomas Fletcher, by U. M. & G. B. Rose and Ratcliffe & Fletcher, his attorneys, and asks leave to withdraw the above items of his account herein, amounting in the aggregate to the sum of fourteen hundred dollars.

U. M. & G. B. ROSE.
RATCLIFFE & FLETCHER.

Which opinion and findings of the court are in the words and figures as follows:

In the circuit court of the United States for the western division of the eastern district of Arkansas, February 25, 1891.

THOMAS FLETCHER)
v.
THE UNITED STATES.)

CALDWELL J.: This is a suit under the act of March 3, 1887
48 (C. 359, 24 Stat., 505), to recover five thousand eight hundred and twenty-two dollars and thirty-four cents fees and disbursements alleged to be due the plaintiff, as late marshal of this district, and which were either disallowed or the allowance suspended by the comptroller.

The items of the account are very numerous, but they may be closed under a few heads:

1. A principal item of the account is fourteen hundred dollars for two hundred and eighty per diems on the Lord's day. The marshal resided at the place where the court was held.

Upon an intimation from the court, in the progress of the trial, that it was not inclined to regard the claim with favor, the plaintiff dismissed his suit as to this item, and the court therefore expresses no opinion upon the question, which it is said is raised in a cause now pending in the Supreme Court.

2. The charge of one hundred and thirty dollars and fifty cents for expenses in endeavoring to arrest does not exceed two dollars per day, the sum allowed by law (Sec. 829, Cl. 18 Rev. Stat.) for each day of endeavor.

49 The proof shows that the services were performed and that the expenses equaled the sum charged, and sometimes exceeded the two dollars per day allowed by law.

3. Items for mileage, amounting in the aggregate to one hundred and forty-one dollars and eighty-nine cents, were disallowed or suspended by the comptroller on the ground that mileage was not charged by the shortest route; but the proof shows the route taken was the nearest practicable route at the time.

4. Charges for guard hire, amounting in the aggregate to one hundred and forty-two dollars and forty cents, were suspended by the comptroller on the ground that guards were unnecessary. The proof shows the guards were actually employed and paid and that they were necessary.

5. There are a good many charges in the account, amounting in the aggregate to one thousand eight hundred and four dollars and seventy-three cents, which are for services rendered by the marshal in pursuing fugitives from the justice of this district into other districts and
50 arresting and bringing them back to this district.

These items are disallowed by the comptroller on the ground that the marshal had no authority to arrest a prisoner in any district but his own. Technically that is true, but that is not all there is in the case. When one commits an offense against the United States in one district and flees into another he can not be brought back to the district in which

he committed the offense for trial without an order of the judge of the district in which he may be found. Before this order can be procured it must be made to appear to the judge that there are probable grounds to believe the accused is guilty of the offense charged. It is true that if an indictment has been found that is accepted as sufficient prima facie evidence, but in that case it may be necessary to have a witness to identify the accused. It was, therefore, the practice in this district for the marshal to deputize some one to go after the accused who could iden-
51 tify him, and if need be make the requisite prima facie proof of his guilt.

The deputy marshal acted in the double capacity of witness and marshal, and in this way saved the Government the expense of sending a witness.

Where the order of removal was made the marshal of that district deputized the deputy marshal from this district to execute the warrant of removal, at the same time executing a written relinquishment exhibited to the court and attached to the accounts of all claim against the Government for fees for that service in favor of the marshal of this district. If the marshal of the district where the offender was found had any interest in the fees, this relinquishment operated as an equitable assignment of them to the plaintiff.

The marshal in this matter followed the practice of his predecessors in office whose fees and charges for like services and under similar circumstances were audited and paid by the Department.

52 The practice of the Department was changed after the services sued for were rendered. The fees for these services have not been paid to anyone, and the marshals of the districts in which the fugitives were arrested make no claim to them. On these facts the claim is justly due the plaintiff.

6. Numerous charges for mileage in serving writs for the Government, amounting in the aggregate to fifteen hundred and sixty-five dollars and nineteen cents, were disallowed by the comptroller on the ground that where the marshal had two or more writs for service on different persons at the same time and place he was entitled to mileage on one writ only. The district attorney relies on the act of February 22, 1875 (18 Stat., 334), which provides that no marshal "shall become entitled to any allowance for mileage or travel not actually and necessarily performed under provisions of existing law," and cites in support of his contention Turner *v.* United States, 19 Court of Claims, 629; 15 Op. Att'ys Gen'l, 108.

But a sounder view of the law is expressed in 16 Op. Att'ys Gen'l, 165, and in Harmon *v.* United States, 43 Fed. Rep., 560.

53 7. A charge of twenty-three dollars and thirty-four cents for summoning jurors at one term and of fifty dollars for summoning at another term are allowed. The statute allows the marshal for such service a sum not exceeding fifty dollars for each term. The service was performed and the fees equal the charge made.

8. A charge for a per diem on July 5, 1886, is disallowed by the Comptroller for the following reason: "All over the country this day was celebrated as Independence Day, the fourth occurring on Sunday, and it would seem that the court might have adjourned over that day." The patriotisim of the Comptroller is commendable and his rhetoric good, but his law is very bad. The fifth day of July, when it falls on Monday, is

not dies non juridicus. The record shows the court was open and transacted business on that day, and that the marshal was in attendance, as was his duty to be by law.

54 9. Items aggregating in amount sixteen dollars were disallowed because the service was supposed to have been performed before the plaintiff took the oath of office. The writs were issued before the plaintiff qualified as marshal, but they were not returned until after he had qualified. By an arrangement between the outgoing and incoming marshal the incoming marshal was to have the fees earned on all the writs in the hands of the deputies at the date the office changed hands. Under this arrangement the plaintiff became entitled to these fees. The outgoing marshal makes no claim to them.

10. Numerous small items, aggregating two hundred and sixty-two dollars and sixty-nine cents, were disallowed or suspended by the Comptroller for various reasons. The proof shows that the services were performed, that they were necessary, and that they were services for which the law allows the marshal the fees he has charged. These facts

55 are conceded and a more particular notice of the items is therefore unnecessary.

11. The marshal charges one hundred and two dollars for fifty-one per diems' attendance before a commissioner of the circuit court on days for which he charged and was paid for per diem attendance on the court. He can not earn two per diems on the same day.

12. A charge of thirty-six dollars is made for per diem of deputies' attendance before a commissioner of the circuit court on days when they attended and were paid as bailiffs to the court. They are not entitled to duplicate per diems.

13. There are a number of small items aggregating eighty-six dollars and twenty-nine cents. The services charged for, which go to make up these items, were not authorized by law. The plaintiff now admits this, which renders a particular statement of the items unnecessary.

14. Charges amounting to eleven dollars and fifty cents for serving temporary warrants of commitment are disallowed. (Sec. 1030,

56 Rev. Stat. U. S.; Gilbert v. U. S., 23 Court Claims, 218.)

15. Clerical errors and duplications of account against the Government amounting to nineteen dollars and sixty-three cents are, of course, disallowed.

16. The law allows the marshal not exceeding fifty dollars for serving venires at any one term. For the April term, 1886, he charged twenty-five dollars and eighteen cents in excess of this sum, which is disallowed.

The Government has filed a set-off amounting to one thousand and seventy-two dollars and fifty-eight cents, which the plaintiff admits is just. The following is a statement of the account, as found by the court:

Total amount claimed		$5,822.34
By dismissal of claims for 280 Lord's day per diems	$1,402.00	
By amounts disallowed as stated above	280.60	
By am't of set-off	1,072.58	
		2,753.18
Balance due plaintiff		3,069.16

For which let judgment be entered.

57 The following exhibits are filed with the findings of the court:

ALLOWED.

1. Expenses on endeavor before Thos. Fletcher took oath	16.00
2. Miscellaneous	262.19
3. Expenses on endeavor	130.50
4. Excessive ? mileage	141.89
5. Guard hire	142.40
6. Services outside of dist	1,804.73
7. Double mileage	1,565.19
8. Services on jurors	73.34
9. Per diem of marshal, July 5	5.00
	4,141.74

DISALLOWED.

1. Per diems of marshal before com'r's court, per diems allowed in c't same day	102.00	
2. Per diem of deputies, com'r's c't, per diems as bailiffs, same day	36.00	
3. Miscellaneous	86.29	
4. Serving temporary warrant of commitment	11.50	
5. Items twice charged	19.63	
6. Excessive charge for serving jurors	25.18	
Total		280.60

58

Amount of complaint		5,822.34
Dismissed as to 280 per diems		1,400.00
		4,422.34
Total amount disallowed	280.60	
Set-off	1,072.58	
		1,353.18
Judg't for		3,069.16

Disallowed.—Per diems of marshal disallowed as to 51 per diems being charged at $2 per day before com'r, when on same days he charged & was paid for per diem in court.

Vou. 84. April term 1887	34.00	
Vou. 1. Oct. " "	16.00	
Vou. 1. Apr. " '88	24.00	
Vou. 47. " " '89	28.00	
		102.00

These items are for per diems disallowed the marshal, being charged at $2 per day for appearance before U. S. com'r when on same days he charged and was paid for per diems in court. This duplication of per diems is illegal and on these items we find for defendant.

Per diems of deputies before com'r disallowed, charged on bailiffs same day.

59 [Ch'ge for Jan. 19.]

Vou. 9, Ap. T., 1886, deft. committed Ja'y 18	2.00
" 36, " " " "	2.00
" 33, " " "	2.00
10, Oct. " "	2.00
34, " " "	4.00
41, " " "	2.00
91, " " "	2.00
92, " " "	2.00
95, " " "	2.00
96, " " "	2.00
65, " " 1887	6.00
3, Apr. " 1888	2.00
31, Oct. " 1888	2.00
38, Ap. " 1889	4.00
	360.00

These items are for per diems disallowed the marshal, being charged by deputies for their appearance before U. S. com'rs when on same days they charged & were paid for per diems as bailiffs in attendance upon court.

This duplication of per diems is illegal, and on these items we find for defendant.

Miscellaneous disallowed.

Vou.	30, O. T., 1885,	mak'g copy of c't order		.30
	9, " " "	no arrest		2.70
60	Vou. 107, Oct. T., 1885,	endeavor on sub		2.50
	80, Apr. " 1886,	" no arrest		7.20
Vou.	107, Apr. T., 1886,	endeavor on sub		2.50
	137, " "	deputy in charge transportation of prisoners		10.00
	14, " "	excessive fees as jury commissioner		10.00
	23, Oct. "	travel on warrant		1.86
	27, "	"		3.36
	103, " "	deputy in charge transportation of prisoners		6.00
	53, Apr. '87			.50
	82, " "	deputy in charge transportation of prisoners		6.00
	68, Oct. "	expenses endeavoring to arrest after arrest made		4.00
	" " "	acknowledgment of deed		.75
	54, " '88	mileage on endeavor		21.12
	Apr. T., '89	pay of bailiff by order of c't		2.00
	" "	meals for guard		5.50
				86.29

In this group of small miscellaneous items, amounting to $86.29, the services charged for are unwarranted by law as to same, and as to others the proof of service alleged to be performed are defective. We find for defendant on these items.

Serving temporary warrants of commitment, disallowed.

Vou.	18, Oct. T., '85		.50
	7, " '86		2.50
	15, " '86		2.50
	25, " '86		2.50
61	Vou. 42, Oct. T., '86		.50
	43, " " "		2.00
Vou.	79, Oct. T., '86		.50
	88, " " "		.50
			11.50

This group of items, amounting to $11.50, is for serving temporary warrants of commitment pending examination of prisoner before U. S. com'r. This appears to be in conflict with sec. 1030, R. S. See also 23 C't Claims, p. 218, Gilbert v. U. S.

We find for defendant on these items.

Duplications disallowed.

Vou.	32, Oct. T., '85		2.35
	51, Ap. " '86		2.70
	80, " " "		7.20
	85, " " "		1.38
	128, " " "		6.00
			19.63

This group of items, amounting to $19.63, is a list of duplications by clerical error, and therefore as to them the finding is for defendant.

62 *Disallowances for services on juries.*

Vou. 138, Ap. T., 1886 ..... 25.18

This item of $25.18, for services of summons on jurors is in excess of the amount allowed by law (50), and the finding is for defendant.

Allowed—expenses incurred before Thos. Fletcher took oath of office.

Vou. 2,	Oct. T.,	1885		6.00
3,	"	"		4.00
4,	"	"		6.00
				16.00

These items, amounting to $16, are disallowed by Comptroller because the expenses were incurred before Thos. Fletcher took the oath of office. The proof shows that the services were indeed rendered under the former marshal, but were not then charged for, and were presented in the accounts of the plaintiff for the first time. The Government owes for these services, and they are properly chargeable in the %s of plaintiff. The finding is therefore for pl'ff in this group of items.

63 *Miscellaneous—allowed.*

Vou. 30,	Oct.	T.,	1885,	serving ct. order		2.00
35,	"	"	"	" sum's		2.00
36,	"	"	"	" "		2.00
9,	"	"	"	mile'ge wa'nt		2.70
43,	"	"	"	per diem com'r		2.00
128,	"	"	"	" "		6.00
9,	Apr.	"	'86,	allowed, as prisoner was taken before nearest c't		4.20
"	"	"	"	45 miles allowed, as proof showed travel was made		2.70
126,	"	"	"	per diem com		2.00
41,	"	"	"	repairing c't-house at Helena		2.00
43,	"	"	"	"		4.00
43,	Oct.	"	"	dep'ty before com		2.00
16,	Ap.	"	'87,	per diem com		2.00
26,	"	"	"	travel from L. R		4.68
30,	"	"	"	before com'r		2.00
32,	"	"	"	actual expense on sub		10.00
41,	"	"	"	expense on execution		14.75
76,	"	"	"	capias delivered to dep'ty at L. R		13.86
"				witness fees		1.50
"				"		24.50
53,	Oct.	T.,	'87,	serv'g warrants		4.00
61,	"	"	"	"		6.00
"	"	"	"	"		1.50
66,	"	"	"	"		5.00
70,	"	"	"	U. S. ex rel. Breckinr'dge v. Wise		12.00
91,	"	"	"	service on ex		1.48
"	"	"	"	rent of room at Texarkana by order of c't		1.00
"	"	"	"	posse comitatus		72.00
64 Vou. 10.	Apr.	T.	1888,	serv'g order on j. com		2.00
" 23.	"	"	"	serving warrant		2.00
Vou. 88,	Apr.	T.,	1888,	serving order on j. com		2.00
43,	Apr.		'89.			
44,	"		"			
45,	"		"	} Clerk's fees for filing accounts		25.60
46,	"		"			
				mileage of jury com'r at Helena		2.70
" 2,	supplemental		a/s 87			4.05
3,	"		" "			5.30
4,	"		" "			2.60
5,	"		" "			6.55
						262.69

This is a miscellaneous lot of small items aggregating $262.69, disallowed or suspended by the Comptroller. The proof at the trial sufficiently showed that the services were performed as charged for, and that they were services necessary to be performed, and were items which could lawfully be charged against the U. S. The finding is therefore for the plaintiff.

Expenses on endeavor to arrest, suspended by Comptroller for items.

Vou.	8,	Oct. T.	88	12.00
	9,	" "	"	4.00
	10,	" "	"	6.00
65	Vou. 12,	Oct. T.	85	4.00
	18,	" "	"	6.00
Vou.	19,	Oct. T.	85	16.00
	21,	" "	"	6.00
	24,	" "	"	8.00
	28,	" "	"	6.00
	1,	Ap. "	86	2.00
	9,	" "	"	4.00
	43,	Oct. "	"	12.00
	48,	" "	"	12.00
	60,	" "	"	12.00
	36,	Ap. "	87	4.00
	28,	" "	"	6.50
	33,	" "	"	.50
	79,	" "	"	4.00
	62,	" "	"	1.00
	4,	" "	89	2.50
	22,	" "	"	2.00
				130.50

This group of items, aggregating $130.50, is for expenses of deputy marshals in endeavoring to arrest, under process, persons charged with or convicted of crime. The statute for this service allows "the sum actually expended, not to exceed $2.00 a day," R. S., sec. 829, ch. 18. These accounts are by the Comptroller suspended for items. By the vouch-
66 ers exhibited, duly sworn to, and by oral proof at the trial, it sufficiently appeared that the deputy marshals incurred the expenses actually charged for. The finding is therefore, for the plaintiff on this group. Harmon v. U. S., 43 Fed. Rep., 566.

Excessive mileage allowed.

Vou.	85,	Oct. T.	1885	1.30
94, 95, 96, 97,	Ap.	"	1886	17.31
	8,	Oct "	"	3.30
	9,	" "	"	1.10
	25,	" "	"	5.04
	35,	" "	"	4.08
	13,	Ap. "	1887	27.58
	36,	" "	"	10.08
	80,	" "	"	8.80
	6,	Oct. "	1888	2.64
	23,	" "	"	12.60
	78,	" "	"	26.28
	83,	" "	"	16.20
	84,	" "	"	4.50
	8,	Ap. "	1889	1.08
				141.89

These items for mileage, aggregating $141.89, were disallowed or suspended by the Comptroller for the reason that the mileage so
67 charged was excessive. Upon the proofs at the trial it appeared that the number of miles were actually travelled as charged for. In some instances the route taken was not the shortest one, but in all cases it was the nearest practicable route at the time.

Guard hire allowed.

Vou.	49, Ap. T. 87	11.30
	58, " " "	9.70
	65, " " "	4.80
	68, " " "	4.20
	70, " " "	4.00
	71, " " "	8.50
	72, " " "	7.10
	75, " " "	11.20
	77, " " "	23.10
	79, " " "	26.80
	80, " " "	13.50
	66, Oct. " 88	9.20
	39, Ap. " 89	9.00
		142.40

These items, aggregating, $142.40, for guard hire, are suspended by the Comptroller as unnecessary. The evidence introduced by the plaintiff at the trial showed to the satisfaction of the court that the guards
68 were actually employed and served as stated, and that they were necessary for properly guarding the prisoners.

Services performed outside of district.

Vou.	7, Oct. T., 1885	69.61
	20, " " "	94.04
	32, " " "	2.35
	8, Ap. " 1886	127.42
	33, " " "	57.33
	53, " " "	150.02
	115, " " "	115.23
	116, " " "	102.48
	5, Oct. " "	140.95
	14, " " "	331.00
	20, " " "	55.41
	10, " " "	79.27
	3, Apr. " 1887	17.75
	7, " " "	28.27
	8, " " "	74.90
	12, " " "	42.30
	14, " " "	129.40
	15, " " "	187.00
		1,804.73

These items, amounting in all to $1,804.73, are for services per-
69 formed by the marshal in bringing prisoners from other districts to this district for trial. These items are disallowed by the Comptroller for the reason that the marshal had no authority to arrest a prisoner in any district other than his own. It seems that the marshal in this matter has merely followed the custom of his predecessors in office, a custom sanctioned by the previous accounting officers of the Treasury Department. It is not denied that the services were performed as stated, and the Government justly owes for them. The question is merely one of form. It

appeared to the satisfaction of the court that in each case the plaintiff had exhibited with his accounts the written disclaimer of the foreign marshal. There is, therefore, no danger that the Government will be compelled to pay twice for this service, and the finding is for plaintiff on this group of items.

Double mileage.

	Vou. 6, Oct. Term, 1885		6.36
70	Vou. 9, Oct. Term, 1885		1.62
	12, " " "		7.26
Vou.	17, Oct. Term, 1885		3.54
	18, " " "		8.40
	22, " " "		4.08
	51, " " "		2.70
	1, Ap. " 1886		1.14
	9, " " "		1.62
	19, " " "		2.88
	22, " " "		3.90
	51, " " "		1.56
	75, " " "		7.86
	138, " " "		113.40
	4, Oct. " 1886		6.30
	8, " " "		5.82
	27, " " "		6.72
	39, " " "		6.78
	52, " " "		5.10
	55, " " "		6.84
	68, " " "		5.10
	85, " " "		1.98
	44, " " "		5.10
	64, " " "		9.72
	82, " " "		9.00
	88, " " "		6.54
	90, " " "		9.12
	99, " " "		1.20
	104, " " "		207.37
	6, Apr. " 1887		3.90
	23, " " "		1.80
71	Vou. 37, Apr. Term, 1887		3.60
	"		2.80
Vou.	38,		5.60
	40,		10.08
	93, Oct.		147.66
	9, Apr. 1888		3.48
	11,		9.18
	12,		11.10
	14,		11.10
	17,		8.10
	19,		126.36
	26,		8.28
	27,		11.70
	28,		.24
	46,		8.58
	48,		2.58
	54,		10.20
	51,		12.00
	64,		75.90
	4, Oct. 1888		4.86
	6,		11.10
	9,		7.20
	13,		9.90
	19,		6.96
	21,		12.00
	22,		8.58
	28,		6.90
	34,		9.72
	38,		6.36

Double mileage—Continued.

72	Vou.	42, Oct. term, 1888	6.90
		64, " " "	6.60
Vou.		68, Oct. 1888	4.32
		73, "	1.38
		77,	3.00
		78,	4.56
		84,	7.50
		93,	4.44
		102,	4.92
		103,	133.80
		4, Apr., 1889	9.00
		8,	5.88
		9,	10.38
		11,	4.86
		13,	3.00
		20,	9.24
		22,	1.44
		23,	1.32
		26,	.78
		42,	54.78
		6, supplemental ⅜, 1887	20.10
		7, " "	7.56
		8, " "	1.80
		9, " "	6.78
		10, " "	9.00
		11, " "	3.60
		12, " "	3.60
		13, " "	3.60
		14, " "	8.58
73	Vou.	15, supplemental ⅜, 1887	8.58
		16, "	3.90
Vou.		17, supplemental ⅜, 1887	11.40
		18, "	9.72
		19, "	7.98
		20, "	4.26
		21, "	8.88
		8, " Oct. T., '87	10.88
		9, "	9.36
		10, "	7.02
		11, "	7.02
		12, "	7.02
		14, "	10.68
		15, "	19.20
		16, "	9.60
		17, "	9.60
		18, "	10.62
		19, "	10.62
		20, "	8.40
		21, "	9.00
		22, "	1.38
		23, "	6.48
		24, "	9.00
		25, "	5.04
			1,565.69

These items for mileage, aggregating $1,565.69, are disallowed by the First Comptroller under the following state of facts. In these in-
74 stances the officer had in his hands for service several writs against different persons for different causes and made service of two or more of such writs in the course of one trip, but charging full travel on each writ. The disallowance is for mileage charged on writ or writs in excess of one at same trip. The district attorney relies on the act of Feb'y 22, 1875, which provides that no marshal "shall become entitled to any allowance

for mileage or travel not actually and necessarily performed under the provisions of existing law," 18 St., 334, and cites in support of his position Turner v. U. S., 19 Ct. Claims, 629; 15 Att'y-Gen'l, p. 108.

We concur in the opinion of Attorney-General Devens that this provision does not deny a marshal full travel on two or more writs in his hands at the same time & served at the same place on different persons, inasmuch as his travel is actual and necessary to serve each and
75 every of those writs, but that "that provision was intended to apply to cases in which no actual travel is performed in serving process, as for instance, where the writ is sent through the mail to be served by a deputy at or near the place of service," 16 Op. Att'y Gen'l, 165. To same effect see Harmon v. U. S., 43 Fed. Rep., 566. The finding is therefore for the plaintiff on these items.

Allowed for service on jurors.

Voucher 1, Oct. term, 1886	23.34
" 138, Apr. "	50.00
	73.34

These items for serving jurors, amounting to $73.34, disallowed, are allowed, as the statute allows the marshal for service of jurors $50 at each term of court. Sec. 829, R. S., par. 3.

Allowance for per diem, July 5, 1886	5.00

This per diem is disallowed by the First Comptroller for the following reason: "All over the country this day was celebrated as Independ-
76 ence Day, the 4th occurring on Sunday; and it would seem that the court might have adjourned over for that day."

The record shows that the court was open July 5, 1886, and the proof shows that the marshal was in attendance, as was his duty by law. This item is therefore found in his favor.

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77 United States of America, western division of the eastern district of Arkansas.

Be it remembered, that at a circuit court of the United States of America, in and for the western division of the eastern district of Arkansas, begun and holden on Monday, the 13th day of April, anno Domini, one thousand eight hundred and ninety-one, at the United States court room, in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, circuit judge presiding and holding said court, the following proceedings were had, to wit:

On May 11, 1891.

THOMAS FLETCHER, LATE U. S. MARSHAL,
v.
THE UNITED STATES.

Comes the United States, by Charles C. Waters, esq., district attorney, and S. R. Allen, esq., assistant to the district attorney, and files herein her

statement of errors and petition for appeal to the Supreme Court of the United States, which petition for appeal is allowed by the court.

78 Which petition for appeal and statement of error, &c., is in words as follows:

In the circuit court of the United States, eastern district of Arkansas.

THOMAS FLETCHER, LATE MARSHAL,
v.
THE UNITED STATES.

To the honorable circuit court of the United States for the eastern district of Arkansas:

Comes the petitioner, the United States, by Charles C. Waters, esq., district attorney, and Samuel R. Allen, esq., assistant district attorney, and states to the court now here that the United States alleges that in the rulings and judgment of the court in this cause the following errors against the petitioner were committed, viz:

79 1. The court erred in giving judgment against the defendant petitioner in favor of the plaintiff for the sum of $1,804.73 for services rendered by the plaintiff as marshal in pursuing fugitives from the justice of this district into other districts, and arresting and bringing them back to this district, the charges being for services performed entirely without the district by him or his deputy. (Item 5, finding and judgment of the court.)

2. The court erred in giving judgment against the defendant herein for the further sum of $1,565.19 for mileage (which was disallowed by the Comptroller of the Treasury of the U. S.), and by ruling thereon that though the marshal had two or more writs for service on different persons at the same time and place, when and where the mileage charged for by the plaintiff and allowed by the court as above was made, the said sum being for excess of mileage over more than for one writ at the same

80 time and place, and while serving different persons, the marshal is entitled to the same. (Item 6, finding and judgment of the court.)

3. The court erred in giving judgment against the defendant in favor of the plaintiff for the further sum of $16.00 for services performed by the deputy of the former marshal, and before the plaintiff took his oath of office as marshal. Which sums in the aggregate amount to the sum of $3,385.92, judgment against the defendant herein.

Wherefore the defendant petitioner prays the court now here to allow the defendant an appeal herein upon the matters alleged to the Supreme Court of the United States, with proper writs, etc.

CHAS. C. WATERS,
U. S. Dist. Atty.
SAM'EL R. ALLEN,
Asst. U. S. Dist. Atty.

81 United States of America, western division of the eastern district of Arkansas.

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the western division of the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office, and constitute a true copy of the record and of the petition for appeal and of all proceedings in the case of Thomas Fletcher, marshal, &c., v. The United States.

In witness whereof I have hereunto set my hand and the seal of said court this 27th day of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and fifteenth.

[SEAL.]

Attest: RALPH L. GOODRICH,
Clerk.

(Indorsement on cover:) No. 783. The United States, appellant, vs. Thomas Fletcher. Filed June 6, 1891. E. Arkansas, C. C. U. S. Supreme Court U. S., clerk's office. Received June 6, 1891.

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Office Supreme Court U. S.
FILED.
DEC 29 1892
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THOMAS FLETCHER.
No. 783.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

THE UNITED STATES, APPELLANT,
v.
THOMAS FLETCHER.
No. 783.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This suit was instituted January 9, 1891, in the circuit court of the United States for the eastern district of Arkansas by Thomas Fletcher, who had been United States marshal for said district, and was for fees alleged to be due him as such, but which had been disallowed or suspended for further information by the First Comptroller of the Treasury. An exhibit filed with the complaint sets forth the items in controversy, some of which

were not disallowed, but merely suspended for proper explanations from the marshal, which had not been furnished prior to the commencement of the action.

The findings of fact show that many items *suspended* by the accounting officers for explanation, and which they did not *disallow*, are included in the judgment. (Record 20, 26.)

ITEMS PRESENTED IN THE ASSIGNMENT OF ERRORS.

1. Expenses incurred by a deputy of appellee's predecessor while endeavoring to arrest persons for offenses against the United States, $16.

These expenses were paid by appellee, as disbursing officer, shortly after he became marshal. It does not appear that he had been authorized to make the disbursement from any funds advanced to him from the Treasury (Record 1, vouchers 2, 3, and 4; Record 23, 25). The findings show that the credits claimed for this disbursement were presented in appellee's accounts for the first time, and that the Government owed the amount for the services performed, and that the Comptroller disallowed credit for the disbursements as unauthorized by law.

2. Mileage for travel performed by appellee, or his deputy, in pursuing into and arresting persons in other judicial districts, who were charged with crime in the eastern district of Arkansas, and bringing the prisoners back to the latter district. There are eighteen vouchers in this item, amounting to $1,804.73. (Record 27, and Exhibit C).

Where arrests were so made the marshals of the foreign districts deputized the appellee or his deputy to execute the orders of removal of the prisoners to the eastern district of Arkansas, and they relinquished in favor of appellee all claims against the United States for the mileage and fees so accrued.

The Comptroller disallowed the charges for this service, and the court below found that up to the time the Comptroller had disallowed these vouchers it had been the custom of the United States marshals in the eastern district of Arkansas to so pursue fugitives from justice into other districts, and that in such cases it had been the practice in the Treasury Department to allow the mileage and other fees to the pursuing marshal, when the foreign marshals relinquished claims for the same in favor of the pursuing marshal. But it appears from Exhibit A, mentioned in the complaint (Exhibit C, Record, 1), and the vouchers on page 27 of the record that the First Comptroller began to disallow such charges in the accounts rendered by appellee for the October term, 1885, and that he continued to disallow all subsequent charges of this character.

3. Expenses incurred while endeavoring to arrest parties charged with crime against the United States in the eastern district of Arkansas. These are included in twenty-one vouchers, amounting to $130.50. The Comptroller *suspended* credit for the disbursements made until appellees should furnish an itemized statement of the expenses; and it does not appear that the latter furnished the required statement. (Record 26 and Exhibit C.) The fee

bill (Rev. Stat., 829), allows the marshal credit in such cases for "the sum actually expended, not exceeding two dollars a day."

The findings show "that the services were performed, and the expenses equaled the sum charged, and sometimes exceeded two dollars a day;" and that the charge does not exceed $2 per day for each day of endeavor. (Record 20.)

The allowance of this item was therefore proper, if the court below had jurisdiction to give judgment for items so *suspended and not disallowed* by the Comptroller.

4. Mileage for serving more than one writ on different persons in the course of one trip. The Comptroller disallowed credit for more than one mileage for the travel under the following state of facts as found by the court:

> The officer had in his hands for service several writs against different persons for different causes, and made service of two or more writs in the course of one trip, but charging full travel on each writ (Record, 29).

The conclusion of law on this finding seems to indicate that more than one of these writs *may* have been served at the same place at the same time (Record 30). We make this statement, as it is very desirable that the question should be determined as to whether a marshal is entitled to travel-fees on several writs served for the United States at the same time and place upon different persons. Finding 6 (Record, 21), says the charges "were disallowed by the Comptroller on the ground that where the marshal had two or more writs for service on different persons at the

same time and place, he (the marshal) was entitled to mileage on one writ only." The question would therefore seem to be presented.

ASSIGNMENT OF ERRORS.

1. The court erred in its conclusions of law based on the facts found, that appellee is entitled to recover from the United States the sum of $16, disbursed by him for expenses incurred by a deputy of his predecessor in office while endeavoring to serve warrants of arrest, which expenses were incurred before appellee took the oath of office as marshal of said district.

2. The court erred in its conclusions of law based on the facts found, that appellee is entitled to recover from the United States the sum of $1,804.73 for travel and other fees for pursuing into foreign judicial districts, and there arresting persons charged with crime in the eastern district of Arkansas and for bringing persons so arrested into the latter district, notwithstanding the foreign marshals deputized appellee or his deputy to execute the warrants of removal and made written relinquishments of all claims against the United States for that service in favor of appellee, and notwithstanding said relinquishments were attached to the accounts of appellee for that service which had been presented to the accounting officers of the Treasury.

3. The court erred in its conclusions of law based on the facts found, that appellee was entitled to recover from the United States the sum of $130.50 for expenses incurred

in endeavoring to arrest in his own district persons charged with crime therein, which sum did not exceed the rate of $2 a day, and was not *disallowed* by the accounting officers in the settlement of his accounts, but merely *suspended* by said officers for an itemized statement of the expenses.

4. The court erred in its conclusions of law based on the facts found, that appellee was entitled to recover from the United States the sum of $1,565.16 for more than one mileage on service of two or more writs against different persons for different causes when the service was made in the course of one trip, and also in allowing mileage on each writ where more than one of the writs was served at the same time and same place on different persons.

5. The court erred in ordering and adjudging that appellee should have and recover of and from the United States the sum of $3,069.16 for his damages, and that the United States pay one-half of the costs incurred in the suit.

ARGUMENT.

I.

FIRST ASSIGNMENT OF ERROR.

Before the claimant in the court below entered into the office of United States marshal, a deputy of his predecessor therein had performed services as such and incurred expenses for which the United States owed the sum of $16. Presumably this sum was primarily due to the former marshal as expenses of office.

Marshals are not authorized by law to pay the debts due to or expenses incurred by the deputies of their predecessors in office. It does not appear that the United States advanced money to the appellee for that purpose, hence the contrary will be presumed. The debt was, at most, a claim against the United States, and so far as the executive branch is concerned, it could be adjusted and paid only by the proper accounting officers of the Treasury Department (Rev. Stats., 236) after the former marshal had retired from office.

It is unnecessary to argue here that the fiscal system of the United States, which Congress has created and guarded by so many statutes, and the long-standing practice pursuant thereto which rounds out that system, should not be disregarded by the courts, and especially where parties do not show that they have pursued the mode of relief afforded by that system and been denied their rights.

For the payment of expenses or official compensation to deputies, the marshals, whose deputies they are, are disbursing officers, and they are required to render accounts of such disbursements. Funds are advanced to them from the Treasury on appropriations made annually for that and other purposes. The deputies are officers of the Government, although not commissioned by the President. They are officers appointed by the marshals under statutory authority with the approval of the courts; and it would seem to follow that such officers have a claim against the United States for compensation fixed by law and remaining unpaid. *United States* v. *Tinklepaugh* (3 Blatch. C. C., 425); *United States* v. *Strobach* (4 Woods' C. C., 592); *Twenty Per Cent Cases* (13 Wall., 568.)

If this is the status of the deputy of appellee's predecessor it is obvious that the payment made to him by the succeeding marshal was without authority of law. No disbursing officer can constitute himself a creditor of the Government for a payment which he was not authorized to make. No official function is more carefully restricted by the statutes than that of disbursing the public money.

In effect the payment made to the deputy marshal was in the nature of an assignment of a claim against the United States to appellee. To hold that appellee was authorized to make such payment and could recover therefor in his own name is to work an assignment of the claim by a mere voluntary payment.

SECOND ASSIGNMENT OF ERROR.

The question here presented has been passed upon recently by the Court of Claims in *Dubois* v. *United States*. (25 C. Cls. R., 195.) The statutory provisions are there recited. Referring to them Richardson, C. J., delivering the opinion of the court, said:

> The object of these provisions is not in doubt. They restrict the marshal in the performance of his official duties to the district for which he is appointed and in which he is required permanently to reside. They prevent his [the marshal's] traveling all over the country with precepts to serve in other districts.

The objections to this class of items are:

1. They include mileage for the travel of the deputies in going into foreign districts, as well as *the* mileage for travel in these districts and for the transportation of the

persons arrested when arrests were made. This would seem to be the inference from the language of a finding of the court:

> There are a good many charges in the accounts amounting to $1,804.73, which are for services rendered by the marshal in pursuing fugitives from the justice of this district into other districts and arresting and bring them back to this district.

The legal fee in the foreign district is only for mileage "for travel [therein] in going only to serve any process," *i. e.*, travel from the place where the process is issued to the marshal, usually the clerk's office. (Rev. Stat., 829.)

The findings do not enable us to deduct the excessive mileage; but objection is made to the whole items.

2. The legal mileage earned by appellee's deputy under the deputization of the foreign marshals was a part of the official emoluments of the latter, and as such is required to be included in their emolument returns, in order to enable the accounting officers of the Treasury to determine whether their emoluments came up to or exceeded the rate of $6,000 per annum. We have no finding that with this mileage added the foreign marshals' maximum compensation would not be exceeded.

By relinquishing all claims against the United States for these fees to appellee, the foreign marshals may, to that extent, have relieved themselves from paying that amount of surplus earnings into the Treasury.

If it has been the practice of the Treasury Department to tolerate such assignments of claims against the United States, it may be excused in settled accounts, on the ground

that the accounting officers settle all marshals' accounts and can therefore guard against wrongs which might otherwise be committed against the revenues of the United States. But as courts have not the vouchers and papers of the adjusted accounts for the several judicial districts before them, and as the practice is clearly contrary to the statutes and leads to confusion in emolument accounts, it should not be sustained.

Appellee relies upon the custom in his district of pursuing criminals into other districts and the practice of the accounting offices of admitting assignments of fees in such cases between marshals in the settlement of accounts. To this we reply:

1. The appellee had notice of the abandonment of that practice, as far as it affected his office, shortly after the October term of the court, 1885, that is to say, in the year 1885. Of the $1,804.73 allowed by the court below, the sum of $1,638.73 accrued in the years 1886 and 1887, all after April 1, 1886. He had notice of the change of practice before April, 1886, at latest, because it is to be presumed that his accounts were rendered quarterly and adjusted promptly, since the statutes so require.

The practice might have had some force as a departmental usage if the language of the fee bill and the statutes in relation to emolument returns and assignments of claims were susceptible of the construction so given. But usage, it has been observed, can be binding and operative only as it is the interpreter of a doubtful law, for as against a plain statutory law, no usage is of any avail. (Per Lord Brougham in *Magistrates of Dunbar* v.

Duchess of Roxburghe, 3 Cl. and Fin., 354.) The rule in respect to contemporaneous expositions, says Pollock, C. B., in *Pochin* v. *Duncombe* (1 H. and N. 856, 857), amounts to no more than this, that if the act be susceptible of the interpretation which has been put upon it by long usage, the courts will not disturb that construction. Upon the question of executive usage the Supreme Court held in the *Floyd Acceptances Case* (7 Wall., 666) that a long-standing usage in the War Department was invalid, because contrary to the statute. Subsequent cases in this court might be cited if the doctrine were not so well established.

THIRD ASSIGNMENT OF ERROR.

The finding of the court shows that "the services were performed and that the expenses equaled the sums charged and sometimes exceeded $2 a day," and that not more than $2 was charged for any day (Record, 20). This is clearly error. The court below had no jurisdiction to allow this item, because it had not been disallowed by the accounting officers.

Congress has established an accounting system in the Treasury Department. It is the intention of the law that all claims, demands, and accounts against the United States or in their favor shall be carefully scrutinized, settled, and adjusted by the accounting officers of that Department (Rev. Stat., 236). Before courts were given jurisdiction of suits against the United States the circuit and district courts had, by the acts of March 3, 1792, chapter 20 (1 Stat., 514), jurisdiction to entertain pleas of

set-off in suits against their debtors. This jurisdiction still exists in those courts (Rev. Stat., 951, 957). But to admit the plea it must be shown that the claims offered in set-off had been presented to the accounting officers of the Treasury Department and were by them disallowed, or that the defendant had a valid excuse for not presenting them.

It is entirely unnecessary to cite any of the numerous decisions of this court upon that statute. Suffice it to say that in such case no plea of set-off against the United States has ever been sustained by the Supreme Court unless the claim had been presented to and been disallowed by the proper accounting officers, or a valid reason given for failing to so present it. Plainly, one reason for the restriction of counter-suits against the United States was to avoid the litigation of matters which could be better adjusted by trained accountants than by the courts. The judicial remedy was intended only for claims which had received the scrutiny of the proper fiscal officers of the Government, and which, after due consideration of the facts and law, had been finally passed upon and rejected by the proper executive department.

In respect to the claims included in this finding, it appears that they had been duly presented to the accounting officers, and the court found that they had been "disallowed or suspended by the Comptroller" (Record, 26). The findings show in general the items disallowed and the vouchers suspended, and Exhibit A of complaint (Exhibit C, p. 1) shows the action of the Comptroller on the same vouchers. The exhibit and findings (Record, 26) show that none of the charges for these expenses were disal-

lowed; but, on the contrary, that credit was merely suspended for itemized statements. Were not suspensions for that cause a proper exercise of the powers of the Comptroller? And would not the Comptroller have credited the marshal with the disbursements made as to these items to the full limit of $2 a day if the latter had furnished the required information? We must assume that the Comptroller would have performed his duty in the matter if the marshal had performed his duty by furnishing proper vouchers with his accounts.

Mr. Justice Clifford, delivering the opinion of the Supreme Court in *Watkins* v. *United States* (9 Wall., 764), said:

> Marshals, like other officers, are required to render their accounts quarter-yearly to the accounting officers, with the vouchers necessary to the correct and prompt settlement thereof, within the time prescribed by law. In the case before the court it is not stated in the bill of exceptions, nor is it shown in the record, that any statements of items was furnished, nor that any vouchers were submitted to the accounting officers in support of the claim for credit now under consideration. Vouchers are required by the very words of the act of Congress, and it is very clear that the presentment of an account without items or vouchers would be a useless act. Without such evidence before the accounting officers there could not be any intelligent scrutiny of the claim, nor any decision that would be satisfactory to the claimant or to the public.

This salutary practice of a century in the circuit and district courts would seem to indicate that some restrictions should be placed upon the bringing of suits directly against the United States for claims presented to the ac-

counting officers—of which they have had jurisdiction since the foundation of the Government—while such claims are pending in the Treasury Department, suspended for information which the law requires and which claimants could easily give. To say the least, it would seem to be improper to implead the Government in the courts before payment or credit is denied by its accounting officers.

We submit that Congress did not intend, by giving the Court of Claims and the circuit and district courts jurisdiction of suits against the United States, to impose upon them the functions of accounting officers. Yet of late years such is not seldom the practical effect of the new jurisdiction as exercised by these courts. We further submit that in conferring jurisdiction of suits for claims against the United States upon the courts, Congress did not release marshals or other public officers from the duty of presenting their accounts in proper form, duly itemized and supported by proper vouchers to the accounting department of the Government, and that as to such claims the judicial remedy was intended only for cases where the claims or accounts so presented had been rejected wholly or in part by the accounting officers; or (if such a case could be supposed), when adjustment of the claims is willfully delayed. Even though it should be held that the jurisdiction of the courts to adjust and settle claims against the United States is now concurrent with that of the Executive Department, there is, nevertheless, a comity which would seem to require refusal on the part of the courts to take cognizance of a claim pending before the accounting officers.

It would be a relief to this court, as well as other United States courts, if the rule so carefully observed by the Executive branch of the Government were to be adopted by the Judicial branch. Each day increases the number of suits of the class at bar. These frequently include claims still pending in the Treasury Department and awaiting adjustment for lack of evidence required by law, which claimants either refuse or neglect to furnish, and for which an ordinary letter of explanation would generally be sufficient. The act of February 22, 1875 (18 Stat., 333), end of section 1, makes it plain that this settled policy is still in force.

FOURTH ASSIGNMENT OF ERROR.

The question here made is as to the legality of the disallowances by the First Comptroller of more than one mileage for travel performed by the marshal or his deputy in going to serve two or more writs for the United States on different persons during one trip, and also the like disallowance for travel in going to serve more than one writ on different persons found at the same place and the same time. It is understood that all the writs were served and duly returned.

It is to be remembered that at the time these charges were made the following provision of law (18 Stats., 334, section 7) was in force, as it still is:

> And from and after the first day of January, eighteen hundred and seventy-five, no such officer or person (referring to marshals, clerks, etc.) shall become entitled to any allowance for mileage or travel *not actually and necessarily performed* under the provisions of existing law.

This is stronger language than has ordinarily been used in laws regulating the fees of such officers. If the officer only traveled 100 miles, no finding of a court or of an accounting officer could change that fact and in effect hold that he both actually and necessarily traveled 600 miles if he served at the same time six different writs at the same place.

In this connection, a decision of the supreme court of Indiana in the case of *The Board of Commissioners of Marion County* v. *Pressley, Sheriff* (81 Ind., 361), made by Judge Woods, now of the circuit court of appeals, seems strongly in point. The statute of that State allowed the sheriff "for each mile necessarily traveled in going and returning to serve process, 10 cents." In that case counsel for the sheriff contended that the word "necessarily," as used in the statute, could not be regarded as meaning "actually;" that when a single writ or process is to be served upon two or more individuals a separate service upon each person is required, and though by chance found by the officer, and served at the same time with another, the miles to reach them were necessarily traveled to reach each of them, and consequently the double mileage was within the letter of the law and properly chargeable. Of this contention, Judge Woods said:

> When mileage, according to the distance necessarily traveled, is allowed for the service of a summons, subpœna, venire, or like process, which is to be served on one or more persons, it means for the miles necessarily traveled in obedience to, or in performance of, the command of the writ; and, notwithstanding there may be allowed, besides the mileage, a fee for the service

of the writ on each person, it does not follow that in respect to the mileage the writ should be regarded as a separate process for each individual required to be served, and that, by construction, mileage may be charged according to the distance from the court-house to the place where each person was found, when, in fact, that distance was not traveled; and especially must this be so when the officer is expressly forbidden to claim any constructive fee.

We do not dissent from the proposition that the word "necessary" is frequently used in the law, as indeed we think it is used in this law, "in a less restrictive sense than absolutely necessary." (See *Mueller* v. *The State*, 76 Ind., 310, and *Corey* v. *Swagger*, 74 Ind., 211.) As counsel contend, "necessarily" is not synonymous with "actually," and yet we are clear that "miles necessarily traveled" to serve process can not properly be construed to embrace more miles than were actually traversed in order to complete the service.

We do not mean that under this law the sheriff, upon receiving a writ or process, was bound to predetermine with nice and mathematical accuracy what route he should take in order to perform the command of the writ by traveling the fewest miles; nor that once started on the service he was compelled to keep going without reference to any other consideration of duty or convenience until all were served who could be found before returning in order to be entitled to his mileage for the distance actually traveled. And, on the other hand, we deem it equally clear that he was not permitted when he had served a process on one of two or more whom he was commanded to serve to return without reasonable excuse to the court-house—to "touch base" again, either actually or constructively—before proceeding to serve

another who could have been reached conveniently on the same journey with less travel than would have been required in making such service at another time.

It is to be noted that in the present law, as we have seen, both words, "necessarily" and "actually," are used, and if language is to have any meaning in construing these laws, we submit that there is no room here for the allowance of constructive fees.

The only ground that we have ever known to be given for thus disregarding the provisions of the act of February 22, 1875, above referred to, is that "It is not likely that a matter of such concern to litigants would be left to the arbitrary determination of the marshal himself," and the marshal permitted to tax the entire mileage to one litigant or apportion it as he might see fit among several. It seems to be a wide deduction from a narrow premise to say that because the marshal might apportion a given sum inequitably among *several* litigants he may therefore be permitted to charge the entire sum to *each* litigant.

The opinion of the Attorney-General, given to the Secretary of the Treasury on October 10, 1878 (XVI Op. Att'y-Gen. 165), has been sustained by the court below, and although its reasoning is strong it does not seem to have been adopted by the First Comptroller. It has also been sustained in *Harmon* v. *United States*, in which the opinion of the circuit court for the district of Maine was delivered by Mr. Justice Gray on September 23, 1890 (appealed to the Supreme Court and now pending therein, No. 649, October term, 1892). It is therefore with great

diffidence that we bring this question before this court, since it would seem that these learned opinions sustain the allowance of this item. We gather from these opinions that the provision of the act of February 22, 1875, chapter 95, section 7 (18 Stat. L., 333), which says as to marshals, district attorneys, and clerks: "No such officer or person shall become entitled to any allowance for mileage or travel not actually and necessarily performed under the provisions of existing law," is *in pari materia* with that part of section 829 of the Revised Statutes which allows mileage "for travel in going only to serve any process or other writ."

The later legislation must be given some effect:

We respectfully assert that under no former provision of law was a marshal or other officer of the courts allowed mileage for travel which was not actually performed. Hence it would seem to follow that constructive travel could not have been in the mind of the legislature.

If Congress had intended merely to restore the mileage of the fee bill (Rev. Stat., 824, 825, 829) which had been repealed by the Army appropriation act of June 16, 1874, the first clause of the seventh section would have fully accomplished that purpose. It follows, therefore, that the restoration of mileage is accompanied by some restriction made in the last clause of that section upon a fee formerly allowed by the fee bill (Rev. Stat., 829). It is to be observed, also, that the eighth section of the act expressly repeals "all acts inconsistent with the provisions of this act." And what is the restriction? We think it is inevitable from this legislation, whatever its effect may be

to reduce the fees of marshals, that Congress intended (according to the rules of construction) to reduce the number of mileages allowed by the fee bill for executing process on one tour of travel to serve several writs, and not merely to prohibit mileage when no travel was performed, for, to repeat, such mileage was never allowed by the fee bill.

While it is eminently right on the part of the courts to avoid a construction which would tend to injure public officers and perhaps impede the service of judicial process, nevertheless a construction that would nullify the law or render it unmeaning is not permissible. When all mileage was repealed by the above-cited act of June 16, 1874, however much the repeal might have impeded the service of process, if Congress had not modified that act, no judicial construction could have cured the evil. Similarly, we submit, it is for Congress and not for the courts to explain or give a new meaning to the last clause of section 7 of the act of February 22, 1875. The argument *ab inconvenienti* of the Attorney-General in respect to the difficulty of apportioning costs for travel or writs might be persuasive to the legislature; but when, as in this case, it would make express legislation inoperative, it would seem that the inconvenience can not be considered by the courts.

FIFTH ASSIGNMENT OF ERROR.

For the foregoing reasons, and also the following, the judgment is erroneous:

The law limits the annual compensation of marshals to a sum not exceeding the rate of $6,000 per annum; and

it requires them to make emolument returns to the proper department for adjustment, so that the surplus earnings of the various officers in excess of that amount and the authorized expenses may be accounted for and paid into the Treasury. The statutes, the regulations, and the form as to these returns are set forth in the "Register of the Department of Justice," year 1884, pp. 185–188. It is unnecessary to recite them here.

In this condition of the law, and as it is the duty of all marshals to make these returns, and to satisfy the Treasury Department that claims made for fees and emoluments and expenses are not in excess of personal compensation and the authorized expenses of their offices, it would seem to be necessary pleading in suits instituted by marshals for fees to allege in the declarations or petitions that the sum claimed, and for which judgment is prayed, would not, together with the sums already allowed and paid by the Treasury Department, and the authorized office expenses, exceed the limits of compensation prescribed by the statute. In the case at bar, if the limit has already been reached, and the judgment appealed from should be affirmed, wholly or in part, great wrong would be done to appellants. When a right depends upon and is limited by statutory provisions, as in this case, the rules of pleading would seem to require allegation of facts according to the provisions, and also proof of compliance with them on the part of plaintiffs.

There is error also in rendering judgment against the United States for "half the costs of the suit." The act of March 3, 1887, chapter 359, section 15 (24 Stat. L.,

505), allows for costs against the United States "only what is actually incurred for witnesses, and for summoning the same, and the fees paid to the clerk of the court." We think that the judgment for costs should so specify, as "one-half the costs" of the suit is indefinite.

It is respectfully submitted that the judgment be reversed and the case remanded for dismissal of the petition.

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CHARLES H. ALDRICH,
Solicitor-General.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 783.

THE UNITED STATES, Appellant,

vs.

THOMAS FLETCHER.

BRIEF FOR APPELLEE.

WM. W. DUDLEY,
LOUIS T. MICHENER,
RICH'D R. McMAHON,
Attorneys for Appellee.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1892.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
THOMAS FLETCHER. } *No.* 783.

(Submitted under the 20th Rule.)

I. STATEMENT OF THE CASE.

The appellee, on January 9, 1891, instituted suit under the act of March 3, 1887 (24 Stats. 505), in the Circuit Court of the United States for the eastern district of Arkansas for the recovery of $5,822.34, fees earned and disbursements made by him as Marshal of that district from November 9, 1885, to October 7, 1887 (R. pp. 1 to 10, 20).

The items involved in the suit were as stated in the findings and opinion of the court, viz:

1.	Per diems on Sundays	$1,400 00
2.	Expenses in endeavoring to arrest	130 50
3.	Mileage on writs	141 89
4.	Charges for guard hire	142 40
5.	Services rendered in pursuing fugitives from the justice of his district into other districts, arresting and taking them back to the eastern district of Arkansas	1,804 73
6.	Mileage in serving writs for the Government on different persons at the same time and place	1,565 19
7.	Summoning jurors at different terms of court	73 34
8.	Per diem for attending court July 5, 1886	5 00
9.	Expenses incurred serving writs before claimant took the oath of office	16 00
10.	Miscellaneous fees for serving court writs, expenses of posse comitatus, repairing court-house, renting rooms by order of court, witnesses' fees, attendance of deputy before commissioner	262 69
11.	Attendance of Marshal before commissioner and upon court same days, at $5 a day	102 00
12.	Per diems of deputies before commissioner on days when they attended and were paid as bailiffs	36 00
13.	Fees endeavoring to serve subpœnas, disbursement for acknowledgment of deed, &c.	86 29
14.	Serving temporary warrants of commitment	11 50
15.	Errors in account	19 63
16.	Serving venires	25 18
		$5,822 34

(R. pp. 20, 21, 22.)

The plaintiff dismissed his suit as to item 1. The court allowed items 2, 3, 4, 5, 6, 7, 8, 9, and 10. Items 11, 12, 13, 14, and 16 were disallowed on their merits, and item 15 because it was a clerical error ($280,60). The Govern-

ment filed a set-off amounting to one thousand and seventy-two dollars and fifty-eight cents, admitted by the plaintiff to be just.

The following is a statement of the account as found by the court:

Total amount claimed		$5,822 34
By dismissal of Sunday per diems	$1,400 00	
By items disallowed, as above	280 60	
By amount of set-off	1,072 85	
		2,753 18
Leaving a balance of		$3,069 16

For which judgment was rendered for the plaintiff February 25, 1891 (opinion and findings, R. pp. 20, 21, 22).

From this judgment the United States appealed.

II. Brief.

The order of the court approving the accounts of the Marshal is *prima facie* evidence of the correctness of the items, and in the absence of clear and unequivocal proof of mistake on the part of the court, should be conclusive. (United States *v.* Jones, 134 U. S. 483.) The accounting officers of the Treasury could not, under the act of February 22, 1875 (18 Stat. 333), adjust the accounts without the prior approval of the court. But even if the officer had failed to obtain the approval of the court, he was, nevertheless, entitled to maintain the action he did on the proof of the actual rendition of the services. (United States *v.* Knox, 128 U. S. 230.)

In the case of United States *v.* Barber (140 U. S.) this Court held that something should be left to the discretion of the officer of the court in the performance of his statutory duties. The record in this case discloses the fact

that it was the policy of the First Comptroller to leave little or nothing to the discretion of the Marshal in the exercise of his duties as a ministerial officer, and to disregard the approval by the court of the accounts for fees earned and disbursements paid in serving its precepts and obeying its orders.

We take up the items in the same order as they are stated in the record.

1. This was a charge for per diems on the Sabbath day, and was withdrawn by the plaintiff from his suit.

2. Charges for expenses in endeavoring to arrest. The action of the Comptroller upon these charges was "suspended for items." Section 829 of the Revised Statutes, paragraph 18, allows to a Marshal "for expenses in endeavoring to arrest, under process, any person charged with or convicted of crime, the sum actually expended, not to exceed two dollars a day." * * * As stated in the opinion of the court below, the charge did not exceed two dollars a day, the statutory allowance, and the evidence showed that the services were performed, that the expenses equalled the sum charged and sometimes exceeded the two dollars a day allowed by law.

Harmon *v.* United States, 43 Fed. Rep. 566.

3. Mileage on writs. This was disallowed by the Comptroller on the ground that it was not charged by the *shortest* route. The shortest route is not always the nearest practicable route. This is a question of fact. The statute gives a Marshal "for travel, in going only, to serve a writ, six cents a mile, to be computed from the place where the process is returned to the place of service." (Sec. 829, R. S. p. 25.) The charge was allowed by the lower court upon satisfactory proof that the route taken was the nearest practicable route at the time. It could

not be expected that the Marshal would have travelled by any other.

4. Charges for guard hire. These charges were disallowed by the Comptroller on the ground that the guards were unnecessary. Section 821, paragraph 20, under which the charges were made, allows a Marshal "for transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard" * * *. We submit that under this clear provision of law, the Marshal is the judge, and the sole judge, of the necessity for guards. As stated in the opinion of the lower court, the proof showed that the guards were actually employed and that they were necessary.

5. Services rendered by the Marshal in pursuing fugitives from the justice of his district into other districts, and arresting and taking them back to the eastern district of Arkansas. In allowing these charges, which were for serving warrants of arrest and removal, at two dollars, the court said:

> "These items are disallowed by the comptroller on the ground that the marshal had no authority to arrest a prisoner in any district but his own. Technically that is true, but that is not all there is in the case. When one commits an offence against the United States in one district and flees into another he cannot be brought back to the district in which he committed the offence for trial without an order of the judge of the district in which he may be found. Before this order can be procured it must be made to appear to the judge that there are probable grounds to believe the accused is guilty of the offence charged. It is true that if an indictment has been found that is accepted as sufficient *prima facie* evidence, but in that case it may be necessary to have a witness to identify the accused. It was, therefore, the practice in this district for the marshal to deputize some one to go after the

accused who could identify him, and if need be make the requisite *prima facie* proof of his guilt.

"The deputy marshal acted in the double capacity of witness and marshal, and in this way saved the Government the expense of sending a witness.

"When the order of removal was made the marshal of that district deputized the deputy marshal from this district to execute the warrant of removal, at the same time executing a written relinquishment exhibited to the court and attached to the accounts of all claim against the Government for fees for that service in favor of the marshal of this district. If the marshal of the district where the offender was found had any interest in the fees, this relinquishment operated as an equitable assignment of them to the plaintiff.

"The marshal in this matter followed the practice of his predecessors in office whose fees and charges for like services and under similar circumstances were audited and paid by the Department.

"The practice of the Department was changed after the services sued for were rendered. The fees for these services have not been paid to any one, and the marshals of the districts in which the fugitives were arrested make no claim to them. On these facts the claim is justly due the plaintiff."

The decision of the Court of Claims in the case of Dubois *v.* United States (25 C. Cls. 195) was based upon facts quite different from those in this suit. In that case, the plaintiff had not complied with the requirements of section 1014 of the Revised Statutes, which makes provision for the removal of an offender, upon a warrant issued by the judge of the district where the offender may be found, to the district where the trial is to be had. In the case at bar, the facts are altogether different. The order of the judge of the district where the offenders were found was seasonably issued; the Marshal of that district deputized the deputy marshal of the eastern district of

Arkansas to execute the warrants of removal, at the same time executing a written relinquishment of fees for serving the warrants in favor of the Marshal of the eastern district.

As was said by the court below, "the marshal in this matter followed the practice of his predecessors in office, whose fees and charges for like services and under similar circumstances were audited and paid by the Department. The practice of the Department was changed after the services sued for were rendered."

If there were any doubt as to the validity of the charges, the long-continued practice of the accounting officers in allowing them should conclusively settle the question in favor of the appellee.

The effect of such long-continued construction has thus been stated by this Court:

"Constructions of statutes, in relation to the accounts of individuals with the United States, made by the accounting officers of the Treasury, especially when so longed continued as to become a rule of departmental practice, are entitled to great consideration, and will in general be adopted by this Court." United States *v.* Gilmore, 8 Wall., 330, syl.

The same principle was decided in Edwards *v.* Darby, 12 Wheat., 210; United States *v.* the State Bank of North Carolina, 6 Pet., 29; United States *v.* McDaniel, 7 Pet., 1; United States *v.* Alexander, 12 Wall., 177; Peabody *v.* Stark, 16 Wall., 240; Smythe *v.* Fiske, 23 Wall., 374; United States *v.* Pugh, 99 U. S., 265; Hahn *v.* United States, 107 U. S., 402; Brown *v.* United States, 113 U. S., 568; United States *v.* Hill, 120 U. S., 169; United States *v.* Ala. R.R. Co., 142 U. S. 615.

In the case of United States *v.* Philbrick (120 U. S.

52) it was held that "a contemporaneous construction by the officers upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous, it ought not now to be overturned."

In United States *v.* McDermott (140 U. S. 154), which involved, among other things, a charge for drawing complaints, the Court said: "It appears to have been the practice of the Department of Justice for the past twenty years to allow these as proper charges for drawing complaints, and if there were any doubt as to the propriety of their allowance, such doubt, in view of this long-continued practice, ~~shall~~ should be resolved against the Government."

6. Charges for mileage in serving writs for the Government at 6 cents a mile, disallowed by the Comptroller on the ground that when the Marshal had two or more writs for service on different persons at the same time and place, he was entitled to mileage on one writ only.

In support of this charge, allowed by the lower court, we cite the opinion of the court in the case of Harmon *v.* United States (43 Fed. R. 560):

"The general rule prescribed by Rev. St., § 829, cl. 25, allows the marshal 'for travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpœna in civil or criminal cases, six cents a mile to be computed from the place where the process is returned to the place of service.' The explanatory or restrictive provisions as to the cases of two persons served with the same precept, and of more than two writs in behalf of the same party against the same person, emphasize the general rule, and confirm its application to several precepts against different persons for different causes, although served at the same time. * * *
The United States rely on the act of February 22, 1875,

c. 95, § 7, which, after providing that all accounts of attorneys, marshals, and clerks for mileage and expenses shall be audited, allowed, and paid as if the act of June 16, 1874, c. 285, had not been passed, further provides that 'no such officer or person shall become entitled to any allowance for mileage or travel not actually and necessarily performed under provisions of existing law,' 18 St. 334, 72. We concur in the opinion of Attorney-General Devens, that this last provision, which manifestly includes marshals, does not deny a marshal full travel on two or more writs in his hands at the same time, and served at the same place on different persons, inasmuch as his travel is actual and necessary to serve each and every one of those writs, but that 'that provision was intended to apply to cases in which no actual travel is performed in serving process, as, for instance, where the writ is sent through the mail to be served by a deputy at or near the place of service.' 16 Op. Attys. Gen. 165, 169."

7. Summoning jurors at different terms of court. The charges involved were $23.24 for summoning jurors at one term, and $50.00 for like services at another term. Section 829, paragraph 3, allows a Marshal for such service, a sum not exceeding fifty dollars for each term. The service was performed, and the charge was no more — it was even less — than the statute permits to be allowed.

8. Attendance upon court July 5, 1886. The per diem charged by the Marshal for such attendance was disallowed by the Comptroller for the following extraordinary reason: "All over the country this day was celebrated as Independence Day, the fourth occurring on Sunday, and it would seem that the court *might have adjourned over that day.*" The objection to the per diem charge was wholly unreasonable. A Marshal is a ministerial officer. When the court is in session it is his duty to attend, and for such attendance he is justly and legally

entitled to the statutory fee, irrespective of the fact whether, in the opinion of the Comptroller, "the court *might have adjourned*," or not. In disposing of the objection, the lower court said:

"The patriotism of the comptroller is commendable and his rhetoric good, but his law is very bad. The fifth day of July, when it falls on Monday, is not *dies non juridicus*. The record shows the court was open and transacted business on that day, and that the marshal was in attendance, as was his duty to be by law." (R. pp. 22, 30.)

9. Expenses incurred in serving process before appellee took the oath of office, but paid by him. This item involves a charge for expenses in endeavoring to arrest at the rate of two dollars a day. The writs, as stated in the opinion of the court, were issued before the appellee qualified as Marshal, but were not returned until after he had qualified. The services were not charged for by the former Marshal, and were presented in the accounts of the appellee for the first time. The court held that the Government owed for these services, and that they were "properly chargeable in the accounts of plaintiff." The items in question are not *fees* (R. p. 25). They are *disbursements*, made in accordance with section 829, Revised Statutes, paragraph 18, and the officer who made the disbursements is entitled to credit therefor.

10. This item involves miscellaneous charges for repairing the court-house at Helena, Ark., for expenses of posse comitatus, for rent of court-room by order of the court, for actual expenses on writs in lieu of mileage, &c., disallowed by the Comptroller. The court, in allowing the items, said: "The proof shows that the services were performed, that they were necessary, and that they were

services for which the law allows the marshal the fees charged. These facts are conceded." * * *

They were services within the legitimate sphere of official duty.

5 Opin. Att. Gen., 386, 387.

Hartsorn *v.* United States, 21 C. Cls., 171.

Billings *v.* United States, 23 C. Cls., 178.

United States *v.* Jones, 18 How., 95.

Items 11, 12, 13, 14, 15, and 16 were disallowed.

It is submitted that the judgment of the Circuit Court should be affirmed.

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